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CONVEYANCING

AND

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RELATING TO

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INCORPORATED UNDER THE COMPANIES ACTS,
1862 AND 1867.

ARRANGED AS FOLLOWS:—

AGREEMENTS.

MEMORANDA OF ASSOCIATION.

ARTICLES OF ASSOCIATION.

RESOLUTIONS.

NOTICES.

CERTIFICATES.

PROVISIONAL ORDERS OF
BOARD OF TRADE.

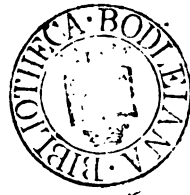
DEBENTURES.

RECONSTRUCTION.

AMALGAMATION.

PETITIONS.

ORDERS.



With Copious Notes.

BY

FRANCIS BEAUFORT PALMER,

OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW.

LONDON :

STEVENS & SONS, 119, CHANCERY LANE,

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1877.

LONDON

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PREFACE.

THE object of this work is to bring together a body of Forms and Precedents for use in relation to the formation, working, and winding up of companies under the Acts of 1862 and 1867.

A considerable amount of space is devoted to notes explaining the Forms and Precedents, and illustrating them by references to the decided cases and to the Statutes.

The author trusts that the work will be found practically useful to members of both branches of the Profession. To render it such has been his aim throughout.

Considering that thousands of companies formed under the Acts above referred to are now carrying on business, and that in England alone during the past twelve months upwards of a thousand

new companies were formed, notwithstanding the prevalent commercial depression, it is obvious that the matters dealt with in the following pages concern the interests of an important section of the community.

F. B. P.

5, NEW SQUARE, LINCOLN'S INN,
April, 1877.

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ERRATA AND ADDENDA.

Page 24, line 5 from bottom, add "*East v. Whitney*, W. N. 1877, 80."

Page 38, line 19 from bottom, "the decision in *Brown & Co. v. Brown* has since been reversed by the Court of Appeal. See W. N. 1877, 52."

Page 141, line 12 from top, "*Hope v. International Financial Society*," has since been reported in 4 Ch. Div. 327.

Page 157, line 2 from top, add "*Johanson v. Lyttles' Iron Co.*, W. N. 1877, 78."

Page 161, line 11 from top, for "Form 2" read "Form 19, *infra*, p. 265."

Page 164, line 17 from top, add "*In re Compagnie Générale de Bellegarde, Campbell's Case*, 4 Ch. Div. 470."

Page 169, line 12 from bottom, for "Clause 118a, *infra*" read "Form 32, *infra*, p. 275."

Page 289, line 16 from top, add "*In re Brynmawr Coal and Iron Co.*, W. N. 1877, 45, as to the conclusive effect of a declaration by the Chairman of a meeting that an extraordinary resolution for winding-up has been carried."

Page 290, line 5 from bottom, "*Hope v. International Financial Society* has since been reported in 4 Ch. Div. 327."

Page 375, line 14 from top, add "*In re Lowestoft, Yarmouth, and Southwold Tramways Co.*, W. N. 1877, 62."

Page 481, line 6 from top. "The decision however of Jessel, M. R., in *Griffith v. Paget*, W. N. 1877, 80, if correct, may, in some cases, seriously affect the practicability of such a scheme of re-construction."

Page 496, line 10 from bottom, "See, however, the case of *Griffith v. Paget*, *ubi supra*."

Page 648, line 12 from top, "See *In re Brynmawr Coal and Iron Co.*, *ubi supra*."

NOTES OF SOME EDITIONS CITED, AND ABBREVIATIONS.

Buckley on the Law and Practice under the Companies Acts, 2nd Ed. 1875, is cited as "Buckley."

Dart's Vendors and Purchasers, 5th Ed., 1876, is cited as "Dart, V. P."

Law Reports. The Chancery Appeal cases and the Equity cases are cited as "Ch." and "Eq." simply.

Lindley on the Law of Partnership, 3rd Ed., 1873, is generally cited as "Lindley."

Pemberton on Judgments and Decrees, 1st Ed.

Seton on Decrees, 4th Ed., 1877.

Pollock's Principles of Contract at Law and in Equity is cited as "Pollock on Contracts."

Sir Henry Thring's work on the Companies Acts is referred to as "Thring."

The Companies Act, 1862 (25 & 26 Vict. c. 89) is sometimes cited as "the Act of 1862" and "the Act."

The Companies Act, 1867 (30 & 31 Vict. c. 131) is sometimes cited as the Act of 1867.

The Companies Acts, 1862 and 1867 are sometimes cited as "the Acts of 1862 and 1867."

For Errata and Addenda, *see supra*, p. xxxi.

CONVEYANCING AND OTHER FORMS AND PRECEDENTS

RELATING TO

COMPANIES

INCORPORATED UNDER THE COMPANIES ACTS,
1862 AND 1867.

AGREEMENTS.

INTRODUCTORY NOTES.

THE primary object of a large proportion of companies formed under the Companies Acts, 1862 and 1867, is the acquisition of a specific property, *e.g.* a mine, a patent, a business, a concession, a contract, and so forth.

Acquisition
of property
commonly
primary object
of company.

The memorandum of association frequently states the acquisition of the specific property as one of the objects of the company, thus: "The objects for which the company is established are—To purchase certain coal mines, situate, &c., and known as," &c. But, even where the memorandum only states the objects in general terms—*e.g.*, "To purchase and work coal mines," &c.,—there is, in most instances, a specific property in the background, which the company is, in fact, formed to acquire.

Hence it is that one of the first acts of so many companies is to adopt, or enter into, an agreement for the acquisition of property.

Hence
agreement
necessary.

In most cases where the immediate acquisition of property by a company is contemplated, one or other of the following plans is adopted:

Plans usually
adopted.

PLAN 1.—Before the incorporation of the company, the

Plan 1.

promoters procure the owner of the property to enter into an agreement with some person, on behalf of the intended company, for the sale of the property to the company upon certain terms and conditions. The memorandum and articles of association of the company are settled, with the concurrence of the vendor and of the promoters, contemporaneously with this agreement. In the articles is inserted a clause referring to the agreement [see *infra*, p. 21], and authorising the directors to adopt and carry it into effect. The memorandum and articles are then registered, and the registrar issues his certificate, whereupon the company becomes incorporated [see *infra*, p. 75]. Shortly after the incorporation the directors hold a meeting at which the preliminary agreement is taken into consideration, and a resolution passed for its adoption. Notice of the adoption is subsequently given to the vendor, and in due course the agreement is carried into effect. Sometimes the adoption is effected by means of a brief supplemental agreement, to which the vendor, the agent, or trustee, and the company are parties, whereby the original agreement is rendered binding on the company. [See *form of such agreement, infra*, p. 56.] The reason why the second agreement is executed is that some doubt exists whether a company can ratify an agreement made before its incorporation. *Kelner v. Baxter*, L. R. 2 C. P. 174, *Scott v. Lord Ebury*, *ibid.* 255.

Supplemental
agreement
sometimes
executed.

Plan 2.

PLAN 2.—Before the incorporation of the company an agreement, expressed to be made between the vendor and the company, for the sale of the property to the company, is, with the privity of the vendor and the promoters, prepared. The memorandum and articles are at the same time prepared and settled with the like privity. In the articles is inserted a clause referring to the agreement and authorising or requiring the directors forthwith to affix the seal of the company thereto, or declaring that the company shall forthwith execute the agreement.

The memorandum and articles are then registered, and the registrar issues his certificate. At the first meeting of the directors the agreement is taken into consideration, and a resolution passed for its adoption. The vendor is informed of the resolution, and a day appointed for completion, when the agreement is executed and in due course carried into effect.

Plan 3.

PLAN 3.—This plan only differs from Plan 2 in one respect,

namely, that the articles do not, expressly, refer to the agreement, but authorise the directors to purchase the property on such terms and conditions as they think fit.

Why Plan 1
often pre-
ferred.

The chief reason why Plan 1 is often preferred is that the promoters of a company not uncommonly desire, before going to the expense of forming the company, to have the vendor bound to sell on specified terms. Moreover, in some cases promoters desire to have such an agreement executed for the purpose of showing it to persons who are to be asked to become directors, or whose support in starting the company is to be sought for.

However, there are many cases in which it is not necessary to bind the vendor until after the incorporation of the company, *e.g.*, where the vendor is one of the promoters of the company, and all parties are prepared to rely on his promise (though not embodied in a formal agreement) to sell to the company on the terms arranged; or where the company is to be formed at the vendor's expense; or where, for any reason, the promoters are in a position to dictate to the vendor. Whenever there is no particular reason for the adoption of Plan 1, it is expedient to adopt Plan 2 or 3. By the adoption of either of these plans the company becomes bound by the agreement, without any question as to whether a company can ratify an agreement made before its incorporation and without any necessity for a supplemental agreement.

Plan 2 or 3
should if
possible be
adopted.

In Plan 3 the articles of association do not refer to the agreement, but the directors are thereby given general powers to acquire the property. These general powers, if properly framed, are quite as effectual as an authority to adopt or enter into a specific agreement. *Overend & Gurney Co. v. Gibb*, L. R. 5 H. L. 480, *et seq.* However, in many cases the vendor and promoters desire absolutely to bind the company, which they are engaged in forming, to acquire the property upon the terms arranged by them before its incorporation. With a view thereto the terms are embodied in an agreement, and directions are given for the insertion in the articles of a peremptory direction to the directors to adopt the agreement, or of a clause declaring that the company thereby adopts the agreement.

As to Plan 3.

Desire of pro-
motors to bind
company to
adopt agree-
ment.

Course
pursued.

Although such clauses do not, as between the company and the vendor, legally bind the company to adopt or execute the

agreement [see *infra*, Articles, miscellaneous clauses, notes to Form 1], yet, in practice, there can be no doubt that their insertion generally goes far to insure the adoption; for directors who find in the articles a direction to adopt a particular agreement, are seldom willing to assume the responsibility of declining to comply with such direction,—at any rate, unless they are convinced that to act otherwise would be to ruin the company.

Personal liability of person contracting on behalf of a company not yet formed.

Where, as in Plan 1, a person purports to contract as agent for a company not yet formed, he is, in the absence of a provision in the contract to the contrary, personally liable on the contract. *Kelner v. Baxter*, L. R. 2 C. P. 174.

Nor is he relieved from liability by the subsequent adoption of the contract by the company. *Scott v. Lord Ebury*, L. R. 2 C. P. 255.

Agreement should be framed so that his liability should be merely nominal.

It is, however, seldom or never the intention of the parties that the agent should be so liable, and accordingly, the agreement is so framed that his liability will be merely nominal. This is effected as follows: The agent agrees that the company shall purchase the property; a future day is fixed for the completion of the purchase; it is provided that upon the adoption of the agreement by the company, the liability of the agent shall cease, and that if the company does not adopt the agreement before a certain day (prior to the day fixed for completion), the agent may at any time afterwards rescind it. The effect of these provisions is, that if the company adopts the agreement, the agent is freed from liability, and if the company does not adopt it in due course, the agent, before the time fixed for completion, rescinds the agreement, and thereby terminates his liability before he has had to do anything under the agreement.

Proviso limiting liability of agent valid; *secus*, if purporting to relieve him from all liability.

A proviso thus *limiting* the liability of the so-called agent is valid; but, not uncommonly, it is provided that he shall incur no personal responsibility whatever. Such a proviso ought never to be inserted where, at the date of the agreement, the company, on behalf of which the agent purports to contract, has not yet been formed, for it is inconsistent with the contract, and therefore void, the result being that the agent is personally liable for the performance of the contract.

Furnivall v. Coombes.

Thus, in *Furnivall v. Coombes*, 5 M. & Gr. 736, the plaintiff had covenanted to do certain repairs to the parish church of St. Botolph, and the defendants as churchwardens and over-

seers "for themselves and their successors, churchwardens and overseers of the parish," covenanted with the plaintiff to pay the sum agreed by certain instalments; and the indenture contained a proviso "that nothing in these presents should be deemed . . . to extend to any personal covenant of or obligation upon the several persons, parties thereto, of the third part (the churchwardens, &c.), or in any way personally to affect them, or any or either of them, their or any or either of their executors, administrators, goods, effects, or estates, in their private capacity, but should be and was intended to be binding and obligatory upon the churchwardens and overseers of the poor of the said parish and their successors for the time being as such churchwardens, &c., but not further or otherwise." It was held that churchwardens and overseers, though they are by statute a corporate body for some purposes, cannot enter into such a covenant in a corporate character, and that consequently it was a personal covenant. As to the proviso it was argued on behalf of the plaintiff that it was altogether void because the covenant was a personal one, and yet by the proviso it was intended to relieve the defendants of all personal liability. On behalf of the defendants it was contended that it was not void, because it was not intended to operate in *total* destruction of the covenant, but to leave the defendants liable so long as they remained in office. It was held, however, that the proviso could not be so construed, that it was intended to relieve the defendants from *all* personal liability, and that it was therefore void. Coltman, J., said: "When we look at the covenant by itself, it is clearly a personal covenant. It has been said that although the proviso is, in terms, a proviso, it is to be construed as merely limiting the general words of the covenant. That might be so, if it could be shown that there would still remain a personal liability in a given event contemplated by the parties. But this argument proceeds on a misapprehension of the proviso, which declares, 'that the covenant is not to be taken as a personal covenant, or to affect the defendants in their private capacity.' Stopping there, the proviso would clearly be repugnant. It proceeds to say, however, 'but shall be and is intended to be binding and obligatory upon the churchwardens and overseers of the poor of the said parish, and their successors, for the time being, as such churchwardens and overseers of the poor, but not further

or otherwise.' This latter part is supposed to explain the covenant by limiting its personal effect to the time that the defendants remained in office. But that, I think, was not the real meaning of the parties. The intention obviously is, that no one shall be *personally* liable ; which imports in truth that there shall be no liability at all." Erskine, J., said : " It is said that the proviso qualifies the extent of the covenant, and gives it a *limited* construction. If that had really been so, I should have thought the argument a sound one : but when the proviso is examined, it is utterly inconsistent with any personal liability whatever." . . . Cresswell, J., said : " I am of the same opinion. Defendants first enter into a clear personal covenant, and then they endeavour, by a proviso, to relieve themselves from all personal liability."

Power to
rescind.

When a company is started to acquire a specific property, and the capital is to be raised by public subscription, it is not unusual so to frame the agreement for the purchase of the property, that if within a fixed period a certain number of shares are not taken, the company can rescind. The object of course is, that if the company should fail in raising the funds necessary to enable it to commence business, it may be able to get rid of the agreement. Sometimes a similar power is given to the vendor, for he may not be willing to sell to a company which has not the means to develop a property for which he is probably to be paid for partly in shares.

As to Forms
given below.

A considerable number of the Forms of Agreements which will be found in the following pages belong to the class of agreements usually entered into shortly before or after the incorporation of a company [see *supra*, p. 2].

The rest are given because they are Precedents of Agreements which, with more or less variation, are in common use.

Precedents of Agreements are seldom of much use to the draftsman, but it is hoped that those given in this work may at any rate afford suggestions.

As to section
25 of the Act
of 1867.

As to what agreements require to be filed with the Registrar of Joint Stock Companies pursuant to Section 25 of the Act of 1867 :—

Section 25.

The section is as follows : " Every share in any company shall be deemed to have been issued, and to be held, subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract

duly made in writing, and filed with the Registrar of Joint Stock Companies at or before the issue of such shares."

Hence whenever a company undertakes to issue paid-up, or partly paid-up, shares for any consideration except cash—*e.g.*, in consideration of property sold to the company, or of services rendered—an agreement in writing must be filed before the issue takes place.

It is of course very material to know what is the meaning of the word "issue" in Section 25. In *Bush's Case*, 9 Ch. 554, paid-up shares were allotted by a company to one Tucker, in consideration of property agreed to be sold by him. Two months afterwards an agreement stating the terms of the purchase was duly filed. Tucker subsequently transferred some of his shares to Bush. The company was ordered to be wound up, and it was sought to make Bush liable to pay for the shares in cash, on the ground that the *allotment* was the "issue" of the shares, and that as the agreement was not filed until afterwards Section 25 had not been complied with. No certificate had been issued in respect of the shares transferred to Bush until after the filing of the agreement. The Court affirming the decision of Bacon, V.-C., held that Bush could not be made liable. James, L. J., said: "There is in this case a contract in writing made between the company on the one side and the vendors on the other, which is connected with these shares, and in that contract it is said that certain shares are to be fully paid-up shares as part of the consideration. There is no evidence that the shares ever left the control of the company, or ever became the property of Mr. Tucker, or of any one else, until the certificate was issued in accordance with the resolution previously passed, and on that his title is complete. Apparently Mr. Bush bought under that title, which is a perfect and complete title, upon documents which the company itself is bound by. I am of opinion that it would be an act of the grossest injustice to Mr. Bush if we were to endeavour to make him liable on these shares. . . ." This decision goes to show that the issue of the certificates is the issue of the shares within the meaning of Section 25, provided that the shares have till then remained under the control of the company.

What is the
"issue" of
the shares.
Bush's Case.

It would seem, however, that if shares are allowed to be transferred or otherwise dealt with by the allottee, they may be

Shares may be
issued though
no certificate
issued.

treated as having been issued, although no certificate has been issued.

Blyth's Case.

Thus in *Blyth's Case*, decided by Hall, V.-C., May, 1876, it was held that the transferee of shares, which had been issued in pursuance of an unfiled contract, was liable to be placed on the list of contributories as the holder of unpaid shares, although no certificates respecting these shares had ever been issued. There was an appeal in this case, which was dismissed with costs, W. N., 1876, 294 (a). In practice the contract is almost always filed before the *allotment* of the shares.

(a) Now reported in 4 Ch. Div. 140.

Must contract
state con-
sideration ?

The question often arises whether the contract must state the consideration for which the shares are to be issued—*e.g.*, where a company has entered into an agreement in writing for the purchase of property, say, in consideration of 10,000 fully paid-up shares, to be issued to A., the vendor: is it necessary to file this agreement? or will it be sufficient to file *an* agreement between the company and A., reciting that the company is under an obligation to issue 10,000 fully paid-up shares to A., and declaring that it is thereby agreed that 10,000 shares shall accordingly be issued to him, and shall be deemed to be fully paid up.

So, too, if the agreement be by parol, must it be put in writing and filed? or will it be sufficient to file *an* agreement as above?

This is a matter of considerable importance, for it very commonly happens that a company desires if possible to avoid filing in a public office an agreement which, besides providing for the issue of paid-up shares, contains clauses and stipulations which it is deemed undesirable to make public. For example, suppose an agreement to issue a number of paid-up shares to a financial agent, in consideration of his undertaking to place other shares of the company. To file this might seriously damage the interests of the company; but there might be no objection to filing an agreement merely declaring that the company was under an obligation to issue the shares, and providing that they should be issued accordingly, and deemed fully paid up. There is no doubt that it has generally been assumed that the real agreement, by virtue of which shares are to be issued, ought to be filed, and not merely such a supplemental one as above.

Generally
assumed that
consideration
ought to be
stated.

Nevertheless the writer is aware of a good many cases in which it has been assumed that the filing of an agreement not stating the consideration is sufficient. Contrary view sometimes acted on.

To take one example—There is a well known and important company which issues its shares, as paid up, in exchange for shares or stock of certain other companies. The mode of complying with Section 25, adopted by this company, has been as follows: An agreement is made between the company and one of its officers whereby it is agreed that the company shall issue the shares specified in the schedule to such persons as may become entitled thereto by resolution of the directors, that such shares shall be deemed fully paid up, and it is thereby declared that the officer enters into the contract as trustee for the allottees. The schedule specifies a number of shares, *e.g.*, “100,000 ordinary shares of the company, numbered — to —, inclusive.” The agreement is duly filed. Shares have been issued by this company to the extent of many hundred thousand pounds of nominal value, on the faith that such an agreement effectually protects the allottees from all liability.

It is true that the section does not expressly require the consideration for the issue of the shares to be stated, but it does say that every share shall be deemed to be issued subject to the payment of the full amount in cash, unless otherwise determined, by a *contract* duly made in writing and filed, &c., and the question is, whether the word “contract” does not imply the existence of a consideration. The word contract is synonymous with agreement, and the following passage from Lord Eldon’s judgment in *Wain v. Wallers*, 5 East, 10, as to the meaning of the word “agreement,” in Section 4 of the Statute of Frauds, seems in point.

The section does not expressly require consideration to be stated.

Meaning of word “agreement.”

“In all cases where, by long habitual construction, the words of a statute have not received a peculiar interpretation, such as they will allow of, I am always inclined to give them their natural ordinary signification. The clause in question, in the Statute of Frauds, has the word *agreement* (‘unless the agreement upon which the action is brought, or some memorandum or note thereof, shall be in writing,’ &c.). And the question is, whether that word is to be understood in the loose, incorrect sense in which it may sometimes be used, as synonymous to *promise* or undertaking, or in its more proper and correct

sense, as signifying a mutual contract on consideration between two or more parties? The latter appears to me to be the legal construction of the word, to which we are bound to give its proper effect :” &c.

If the word “contract” is used in Section 25 in its proper sense as meaning a contract on consideration, there is no doubt the contract to be filed ought to state the consideration, for when Section 25 requires the contract to be in writing it must mean the whole contract. And, as already mentioned, this is the view which in practice is taken in almost all cases. It is moreover to be observed that in *Crickmer’s Case*, 10 Ch. 617, Lord Justice James expressly said that the contract “must be a contract which shows what shares are to be issued fully paid up, and for what consideration they are to be issued.”

Contract if
filed sufficient
though made
before com-
pany formed.

An agreement providing for the issue of paid-up shares upon which a company acts is, if duly filed, sufficient under Section 25, although the company is not a party to it,—e.g., an agreement made before the incorporation of a company, between a vendor and some person purporting to act as agent for the intended company. *Hartley’s Case*, 10 Ch. 157; *Carling’s Case*, 1 Ch. Div. 115; *Mege and Augier’s Case*, W.N. 1875, 208.

Contract need
not specify
numbers of
shares.

It seems that the contract need not specify the denoting numbers of the shares to be issued.

A doubt was expressed by Mellish, L. J., in *Pritchard’s Case*, 8 Ch. 956, whether the agreement ought not to identify the shares by number, so that persons looking at the register might be able to connect the paid-up shares in the holders’ hands with those mentioned in the contract, by virtue of which they were originally issued. Accordingly, in the case of the *Buenos Ayres Co.*, W. N. 1875, 59, paid-up shares having been issued in pursuance of a contract which did not identify the shares, application was made to the Court to remove the names of the applicants from the register in order that a proper contract might be filed within Section 25. However, Jessel, M.R., is reported to have said that “He could see no foundation for the doubt [expressed in *Pritchard’s Case*]. The holders of shares which were not paid up in cash had thrown on them the burden of proving that their shares had been issued in pursuance of ‘a contract duly made in writing, and filed with the Registrar of Joint Stock Companies at or before

the issue of such shares ;' and for the purpose of discharging themselves from this burden it might be convenient that the contract should specify the shares and the names of the allottees as suggested ; but there was nothing in the Act of Parliament to render such specification absolutely necessary."

While, however, it would seem not to be necessary, it is nevertheless expedient to preserve evidence in the Registrar's Office as to the numbers of the shares issued as fully paid up. If any question subsequently arises as to whether a given share has been paid for or not, it is convenient at once to be able to point to a duly filed agreement referring to the share by its number.

Hence it is always better to give the numbers of the shares in the agreement when possible, or at any rate before they are actually issued, to file a supplementary agreement giving the numbers.

Where by a contract duly filed, a company is bound to issue paid-up shares to A., he may authorise the company to issue the shares, or any of them, to his nominees, and the allottees of such shares will be protected by the duly filed agreement of the company with A.

It was at one time thought that this would not be so, and that the shares ought to be issued to A. and transferred by him to his nominees (*Pritchard's Case*, 8 Ch. 961). But the contrary is now settled. *Carling's Case*, 1 Ch. Div. 124 ; *Brown's Case*, 9 Ch. 109 ; *Bush's Case*, 9 Ch. 554 ; S. C. before Bacon, V.-C., 22 W. R. 685 ; *Dent's Case*, 8 Ch. 774. And it is usual now expressly to provide that the shares shall be issued to the vendor or to his nominees.

It may here be observed that, as a general rule, the articles of association cannot be deemed a contract in writing within the meaning of Section 25 of the Act of 1867. Thus in *Firmstone's Case*, 20 Eq. 524, the articles provided that the directors should offer for subscription certain debenture bonds, and that with each bond they should allot, by way of bonus, to the lenders, fully paid shares of equal value to the amount of such bond. F., who was already a member of the company, subscribed for some of the bonds, and bonus shares were allotted to him and registered in his name as paid-up shares. The company was ordered to be wound up, and it was held that F. was liable on the shares, on the ground that the

Nevertheless expedient to give numbers.

Company may allot to nominees of person from whom consideration moves.

Articles not a contract within Section 25.

articles did not constitute an agreement in writing without Section 25 above mentioned. See also *Crickmer's Case*, 10 Ch. 614; and *Pritchard's Case*, 8 Ch. 960.

It was held, however, by Malins, V.-C., in the *Appletreewich Lead Mining Co.*, 18 Eq. 95; 43 L. J. Ch. 793; 22 W. R. 678; 30 L. T., N. S. 287; that the articles may be so framed as to constitute such a contract in writing within Section 25.

What is payment in cash within Section 25.

Under Section 25 shares are to "be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash," unless a contract be filed. The word *cash* here used does not mean current coin or bank-notes merely. Any transaction which in an action at law for calls on the shares would have supported a plea of payment will be deemed to be payment in cash. Thus, if a company is indebted to A. in a sum presently payable, and A. is indebted to the company in respect of calls or other monies presently payable on his shares, an agreement between A. and the company that the amount shall be credited as paid up on the shares is equivalent to payment in cash, and no contract need be filed. *Spargo's Case*, 8 Ch. 407. So, too, if the agreement is that the amount shall be credited as paid up on the shares of B., who is indebted to the company in like manner. *Ferrao's Case*, 9 Ch. 357.

Similarly, if a company be indebted to A., a shareholder, in any sum presently payable, and it is agreed between A. and the company, which has power to receive uncalled capital on shares in advance, that the debt shall be cancelled and the amount treated as having been paid up on A.'s shares, this is payment in cash. *Adamson's Case*, 18 Eq. 670. And the same consideration would apply if in the last case the amount had by A.'s direction been credited as paid up on the shares of some other member of the company. *Ferrao's Case*, 9 Ch. 357. But in all the above cases there must be *bona fides*. If the transaction is designed with a view to evade the Act, it will fail. *Spargo's Case*, 8 Ch. 407.

Although, however, it is not *necessary* to file a contract in the above cases, it is not uncommon to do so for the purpose of preserving an independent record of the nature of the transaction.

Result of default in filing contract.

If default is made in the filing of a contract in writing as to the issue of paid-up shares for a consideration other than cash,

the holders of the shares issued in pursuance of it will, if a winding-up ensue, be settled on the list of contributories as for unpaid shares. *Prichard's Case*, 8 Ch. 956 ; *Fothergill's Case*, 8 Ch. 270 ; *Crickmer's Case*, 10 Ch. 614 ; *Firmstone's Case*, 20 Eq. 525.

It has however been thought, though not decided, that a *bonâ fide* purchaser without notice that the contract had not been filed would not be liable. *Spargo's Case*, 8 Ch. 407 ; *Crickmer's Case*, *ubi supra* ; *Waterhouse v. Jamieson*, L. R. 2 H. L. Sc. 29 ; *Blyth's Case*, *supra*, p. 8.

As to position of *bonâ fide* purchaser without notice.

If shares agreed to be issued as fully paid up, have been issued without the filing of a proper contract, the Court will, with the consent of the company, make an order to rectify the register by striking out the names of the allottees to the intent that the contract may be filed and the shares re-issued. *New Zealand Kapanga, &c., Co.*, 18 Eq. 17 ; *Denton Colliery Co.*, 18 Eq. 16. But it must be shown that the allottees were ignorant of the omission to file the contract. See the cases last mentioned and *Droitwich Salt Co.*, W. N. 1874, 183.

Rectification of register where contract not filed by mistake.

Instead of applying to the Court the allottees may in such a case apply to the company, and the directors will be justified in cancelling the shares and removing the allottees' names from the register, and after the contract has been filed, re-issuing the shares. *Hartley's Case*, 10 Ch. 157.

As to what contracts of a company must be under seal :—

What contracts of company must be under seal.

“Originally all contracts by corporations were required to be under seal. From time to time exceptions were introduced, but these for a long time had reference only to matters of trifling importance and frequent occurrence, such as the hiring of servants and the like. But in progress of time, as new descriptions of corporations came into existence, the Courts came to consider whether these exceptions ought not to be extended in the case of corporations created for trading and other purposes. At first there was a considerable conflict ; and it is impossible to reconcile all the decisions on the subject. But it seems to me that the exceptions created by the recent cases are now too firmly established to be questioned by the earlier decisions, which, if inconsistent with them, must, I think, be held not to be law. These exceptions apply to all contracts by trading corporations entered into for the

South of Ireland Colliery Co. v. Waddell.

purposes for which they are incorporated. A company can only carry on business by agents, managers and others; and if contracts made by these persons are contracts which relate to the objects and purposes of the company, and are not inconsistent with the rules and regulations which govern their acts, they are valid and binding upon the company, though not under seal. It has been urged that the exceptions to the general rule are still limited to matters of frequent occurrence and small importance. The authorities, however, do not sustain that argument:" per Bovill, C. J., in *South of Ireland Colliery Co. v. Waddle*, L. R. 3 C. P. 469.

Facts of the
case.

In this case the directors had made a parol contract with the defendant for the purchase and erection of machinery for working the colliery. The articles vested the general powers of the company in the directors, and did not specifically require contracts to be under seal. The defendant committed a breach of the contract, and, on being sued, objected that the contract not being under seal was void as against the company, and therefore not binding on him for want of mutuality. It was held that the contract was valid though not under seal; and this decision was affirmed by the Exchequer Chamber (L. R. 4 C. P. 617), Cockburn, C. J., saying: "We are asked to overrule a long series of decisions in all the Courts, which, in accordance with sound sense, have held that the old rule as to corporations contracting only under seal does not apply to corporations or companies constituted for the purpose of trading, and we are invited to reintroduce a relic of barbarous antiquity. We are all of opinion that the judgment of the Court of Common Pleas ought to be affirmed. It is unnecessary to say more than that we entirely concur in the reasoning and authority of the cases referred to in the judgment of Bovill, C. J., which seems to us to exhaust the subject. In early times, no doubt, corporations could only, subject to the well known exceptions, bind themselves by contracts under seal. And for some time that rule was applied to corporations which were formed for the purpose of carrying on trade. But the contrary has since been laid down by a long series of cases, and may now be considered law. The machinery contracted for in this case was clearly necessary for the purposes for which the company was formed, viz., the working of coal mines." Kelly, C. B., Channell, B., Lush, and Hayes, J.J., and Cleasby, B.

concurrent. See further Pollock on Contracts, p. 127, *et seq.*

Besides the above common law powers, it is by Section 37 of the Companies Act 1867 provided as follows :—

Section 37 of
Act of 1867 as
to contracts.

“ Contracts on behalf of any company under the principal Act may be made as follows, that is to say,—

- (1.) Any contract which, if made between private persons, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged :
- (2.) Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged :
- (3.) Any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced to writing, may be made by parol on behalf of the company, by any person acting under the express or implied authority of the company, and such contract may, in the same way be varied or discharged :

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company, and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.”

This statutory power, it will be observed, applies to all companies registered under the Act of 1862, and by virtue of it all such companies may, except as regards the contracts specified in Sub-section (1), contract without seal. The power may, of course, be qualified by the articles of association. As the statutory is more general than the common law power, it is only necessary to see that a contract is duly made according to the provisions of the former.

Effect.

As to who is a “ person acting under the express or implied authority of the company,” under Sub-sections (2) and (3) of the above Section :—

Construction
of Section 37.

Authority
of agent.

This will depend on the regulations of the company. Generally speaking the directors have express or implied authority to enter into all contracts necessary for carrying the objects of the company into effect, and of course, a board meeting can exercise the authority. If the board approves of a contract the directors assembled thereat can sign the contract on behalf of the company, pursuant to Sub-section (2). In most companies the directors can delegate their powers, or any of them, to committees consisting of such member or members of their body as they think fit [see Index, "Delegation"], and, where this is the case, the power to enter into a specific contract, or into contracts generally, can be vested in the committee, and a contract signed by the committee will be binding. So, too, where there is power to appoint agents, &c., or to delegate to a manager or other person. Moreover, the company can by special resolution authorise any person to enter into a contract or contracts on its behalf. See further as to who is a duly authorised person, *Barr v. London and Paris Hotel Co.*, 20 Eq. 412; *Browning v. Great Central Mining Co.*, 5 H. & N. 856; 29 L. J. Ex. 899.

Form of con-
tract to be
executed on
behalf of a
company.

As to the form which a contract to be signed on behalf of a company should take:—

Suppose it to be a contract between A. B. and the company. It may be expressed to be made (a) "between A. B. of the one part, and the company of the other part," or (b) "between A. B. of the one part, and C. D. [*the person or persons authorised to enter into it*], on behalf of the company, of the other part."

The former is generally considered the best plan, but they are equally effectual. *Aggs v. Nicholson*, 1 H. & N. 165; 25 L. J. Ex. 848.

Where Plan (a) is adopted the testimonium clause will run thus: "As witness the hands of the said A. B. and of C. D. [E. F. and G. H.], on behalf of the company," or "In witness whereof the said A. B. and two of the directors of the company on its behalf have hereunto set their hands."

Of course no testimonium clause is necessary, and it will be sufficient if the contract is signed thus:

A. B.,
C. D., for the Company.

If the agent is made party to the contract as in Plan (b), the testimonium clause, if used, will run : "As witness the hands of the said parties hereto the day, &c.," and the agent can, if he thinks it expedient, *ex abundanti cautela*, qualify his signature by prefixing or adding words showing his agency.

However, it is now settled that where an agent enters into a contract on behalf of another, it is not essential in order that he may avoid personal responsibility, to add any qualifying words to his *signature*, e.g., "as agent for A. B.," or "on behalf of A. B.," or "on account of A. B.," or "for A. B."

Agent signing contract not liable if it appears on face of contract that he signs as agent.

Prima facie if he signs without qualification he is personally liable, but it is a question of intention, and if in the body of the agreement he purports to contract "as agent," or "on account of," or "on behalf of," or "for" another, he will escape liability. See *Gadd v. Houghton*, 1 Ex. Div. 357, decided by the Appeal Court.

As to stamps :—

An agreement *not under seal* entered into by or on behalf of a company generally comes under the following heading in the Schedule to the Stamp Act, 1870 : "Agreement or any memorandum of an agreement, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument," and accordingly requires a 6*d.* agreement stamp.

Stamps.
Agreement not under seal.

By Section 36 of the Stamp Act, 1870, it is provided that the duty of 6*d.* upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

Adhesive stamps.

The mode of cancelling is prescribed by Section 24 of the Act, namely :

How to be cancelled.

"An instrument, the duty upon which is required or permitted by law, to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so that the stamp may be effectually cancelled, and rendered incapable of being used for any other instrument,

or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time."

The same section also provides that every person who, being required by law to cancel an adhesive stamp, wilfully neglects or refuses duly and effectually to do so in manner aforesaid shall forfeit the sum of 10*l*.

Stamp for
agreement
under seal.

As to stamping an agreement *under the seal* of a company :—

It is generally assumed that every agreement by a company under its seal is a deed, and therefore if not otherwise specifically charged with duty by the Stamp Act, 1870, is liable as a "Deed of any kind whatsoever, not described in this schedule" (Schedule to the Act) *i.e.*, requires a 10*s*. deed stamp : and this appears to be the correct view.

What is a
deed ?

It is not every instrument under seal that is a deed, but all the definitions include "a *contract* in writing sealed and delivered." Thus, in Co. Litt. 161, (*b*), it is said, "A deed signifieth in the Common Law three things, viz., writing, sealing, and delivering, comprehending a bargain or contract between party and party." So in Comyn's Digest it is said, "A deed is a writing containing a contract, and signed, sealed and delivered by the party." See title "Fait." It is subsequently mentioned that signing is not essential. In Spelman's Glossary, title Factum, a deed is defined as "Scriptum solemnne quo firmatur donum, concessio, pactum contractus, et hujus modi." See also the definitions in Cruise's Digest, Tomlin's Law Dictionary, and Wharton's Law Lexicon.

Whether a
company can
make a simple
contract under
its seal.

It appears extremely difficult to draw any distinction between a contract under the seal of a company and a contract sealed and delivered by a private person. Nevertheless it is sometimes contended that a company may make a simple contract under its seal.

Thus : "In a recent case not reported, in which a rule for a new trial was obtained on several grounds, and amongst them on this, that the declaration purported to be on a simple contract, whereas the policy was made by a company under seal ; when the cause came to be shown on that point, Blackburn, J., inquired whether the seal in that case was of any other legal effect than merely the form proper to the company ? Counsel for the plaintiff thereupon desisted from arguing the point, and it was not further pressed by the defendants. *Roper v. English and Scottish Marine Insurance Co., Limited*, coram

Q. B. Arnold on Marine Assurance, 4th Ed. (1871), p. 143. So in *Ex parte the City Bank*, 3 Ch. 758, one of the questions was, whether a debenture expressed to be "given under the common seal of the company" was a promissory note. It was contended that, being under seal, it was a deed, and therefore could not be a promissory note, which is a simple contract. It did not become necessary to decide the point, but Page Wood and Selwyn, L.JJ., were both of opinion that the instrument, though under seal, was a promissory note. See also *Ex parte Colborne and Strawbridge*, 11 Eq. 478.

On the other hand, in *Enthoven v. Hoyle*, 13 C. B. 373; 21 L. J., N. S., C. P. 100, it was held or assumed by the Court of Exchequer Chamber [Parke, Alderson, and Martin, BB., Patterson and Wightman, JJ.] that a debenture under the seal of a company was, though stamped as a promissory note, a deed. So also in *Crouch v. Credit Foncier of England*, 8 Q. B. 375, Blackburn, J., in delivering the judgment of the Court, after referring to the opinions of Page Wood and Selwyn, L.JJ., above cited, expressed doubt whether an instrument under the seal of a corporation could be held to be a promissory note. See also *The Queen v. Morton*, L. R. 2 C. C. R. 22.

Crouch v. Credit Foncier.

It has been held that the mere affixing of a seal to a contract does not make it a deed where it appears not to have been intended to operate as a deed. Thus, where a contract concluded with the words "to which the parties have set their hands" (not hands and seals), it was held not to be a deed, although seals were set opposite the signatures. *Clement v. Gunhouse*, 5 Esp. 83. See also *Chanter v. Johnson*, 14 M. & W. 408. And by analogy it would seem that a contract by a company which concludes, "As witness the hands of the said — and of A. B. on behalf of the company," would not be held to be a deed even though the seal of the company be affixed thereto. See *Aggs v. Nicholson*, 1 H. & N. 165; *Dutton v. Marsh*, L. R. 6 Q. B. 361. Such a contract is not intended to be included in the expression "a contract under the seal of a company" where used in these pages. But it is difficult to understand how a contract in writing expressed to be "given under the common seal," and concluding "In witness whereof the common seal," &c., can be treated as a simple contract. It comes within all the definitions of a deed. It is a contract in writing sealed and *delivered*, for

Seal affixed does not necessarily make contract a deed.

in the case of a corporation the affixing of the seal operates as the delivery of the deed. "Grant on Corporations," 63, and cases there cited.

Contract
under seal
should be
stamped as a
deed.

Under the circumstances it seems expedient to stamp a contract under the seal of a company as a deed. It may here be observed that the Commissioners of Inland Revenue consider that every contract by a company under its seal, if not otherwise chargeable, is liable as a deed. And every contract under the seal of a company to be filed with the Registrar of Joint Stock Companies must be stamped accordingly before it will be filed.

A contract under the seal of a company cannot, it would seem, in any view be liable to the sixpenny stamp duty, for that duty is imposed on agreements "made in England and Ireland *under hand only*," and it has been held that the words in italics are used to exclude agreements under seal. *Chadwick v. Clarke*, 9 Jur. 539 ; 14 L. J., N. S., C. P. 223.

Where a company desires to make a simple contract in writing, the proper plan appears to be to procure it to be signed on behalf of the company as above mentioned, p. 16. It will be just as binding as if under seal, and no difficulty can then arise as to the stamp.

AGREEMENTS.

PRECEDENT I.

AGREEMENT for SALE to intended COMPANY of BUSINESS of PREC. I.
MECHANICAL ENGINEER, including LEASEHOLDS and
CHATTELS. Consideration Cash and Shares. Vendor
not to carry on similar business. Power to rescind.

AN AGREEMENT made the — day of —, between A., Parties.
of — (hereinafter called the vendor) of the one part, and B.,
of —, on behalf of a company about to be formed under the
Companies Acts, 1862 and 1867, with the name of The —
Company, Limited (hereinafter called the company), of the other
part. WHEREAS the vendor has for some time past carried on Recitals.
business as a mechanical engineer upon the leasehold hereditaments hereinafter described: AND WHEREAS the memorandum and articles of association of the company have, with the privity of the vendor, been already prepared, and are about to be registered (a): AND WHEREAS the nominal capital of the company is to be 80,000*l.*, divided into 10,000 shares of 8*l.* each: AND WHEREAS by the said articles of association it is provided that the directors of the company shall, immediately after the incorporation thereof, adopt, on behalf of the company, and carry into effect an agreement therein referred to, being these presents: NOW IT IS HEREBY AGREED as follows:—

(a) Sometimes the memorandum and articles have not been prepared when the agreement is executed, and in such case the first clause of the agreement is not uncommonly to the following effect:—"The said B. shall before the — day of — next, procure a company with a capital of 80,000*l.*, divided into 10,000 shares of 8*l.* each, to be incorporated under the Companies Acts, 1862 and 1867, by the name of The — Company, Limited, as a company limited by shares, for the purpose among others of adopting and carrying this agreement into effect. The memorandum and articles of association of the said company shall before the registra-

Prec. I.

tion thereof be submitted to the vendor for his approval." But it is better to prepare the documents before the agreement is executed. Occasionally, where, as in the precedent, there is a recital that the memorandum and articles have been prepared, the agreement contains a clause as follows:—"The said B. shall before the — day of — procure the said company to be incorporated under the Companies Acts, 1862 and 1867, with the said memorandum and articles of association, and no alteration before the registration of those documents shall be made therein without the consent of the vendor." This would be the first clause.

Agreement
for sale.
Parcels.

1. The vendor shall sell, and the company shall purchase: First, the leasehold hereditaments described in the schedule hereto, for the unexpired residue of a term of ninety-nine years therein granted by the indenture of lease specified in the same schedule, subject to the rent reserved by the said indenture of lease, and the covenants and conditions therein contained, and on the lessees' part to be observed and performed. Secondly, the steam-hammers, cranes, steam-engines, lathes, and all other the plant, machinery, tools, stock-in-trade, chattels, and effects, in or about the said premises firstly described. Thirdly, the good-will of the said business, and all book and other debts due to the vendor in connection with the said business, and the full benefit of all securities for such debts, and of all contracts, engagements, rights, and privileges, to which the vendor is entitled in relation to the said business.

Consideration,
cash, and
shares.

2. The consideration for the said sale shall be the sum of 20,000*l.*, which shall be paid and satisfied as follows; namely, as to the sum of 4,000*l.* in cash, and as to the residue by the allotment to the vendor, or his nominee (*b*) or nominees, of 1500 fully paid-up shares in the company of *s**l.* each.

(*b*) As to the validity of this, see *supra*, p. 11.

Numbers.

3. The said 15,000 shares shall be numbered (*c*) in the books of the company — to — inclusive.

(*c*) As to giving the numbers, see *supra*, p. 11.

Vendor's title
to leaseholds.

4. The title of the vendor to the said leasehold hereditaments shall commence with the said indenture of lease, and the company shall not call for the production of, or investigate or make any objection or requisition in respect of the

title of the lessors (d), or the right to grant the lease, and the production of a receipt for the last payment of rent which shall have accrued due under the said indenture of lease previously to the completion of the purchase shall be accepted by the company as conclusive evidence that all the covenants and conditions in the lease have been performed and observed up to the completion of the purchase (e).

Proc. I.

(d) Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign is not now "entitled to call for the title to the freehold." See the Vendor and Purchaser Act, 1874, s. 2. But this does not prevent a purchaser from objecting to the title if he has the means of investigating it *aliunde*. See *Waddell v. Wolfe*, L. R. 9 Q. B. 515; 43 L. J. Q. B. 138; 23 W. R. 44; and *Jones v. Clifford*, 3 Ch. Div. 779, and cases there cited. See also Dart. V. P. 152, and Dav. I. 536. Hence the necessity of the above stipulation.

(e) As to this, see Dart. V. P. 169. Such a stipulation does not cover a breach after the sale, *Howell v. Knightley*, 21 Beav. 331.

5. The purchase shall be completed on the — day of — next, at the offices of Messrs. —, the vendor's solicitor, when the company shall pay the said sum of 4,000£, cash, to the vendor, or as he shall direct (f).

Completion
of purchase.

(f) If the company is a public one, in which the capital has to be sought by the issue to the public of a prospectus, some months will be allowed for completion. But if it is the conversion of a private business into a company without appeal to the public there need be no delay.

6. The company shall also, on or before the said — day of — next, allot the said 1500 shares as hereinbefore provided.

Allotment
of shares.

7. Upon such payment and allotment as aforesaid being made the vendor shall, at the expense of the company, execute and do all such assurances and things as may reasonably be required for vesting in the company the said premises agreed to be hereby sold, and giving to it the full benefit of this agreement.

When vendor
to execute
assurances, &c.

8. If from any cause whatever the purchase shall not be completed on the — day of — next, the company shall pay interest on the said sum of 4000£. at the rate of 10 per cent. per annum, from that day until the purchase shall be completed (g).

As to interest
if completion
delayed.

Préc. I.

(g) It is now well settled that under such a clause as this interest will be payable in case of delay, however occasioned, provided that there be no vexatious conduct, wilful default, or unfair dealing, on the vendor's part. *Dart. 636.*

Vendor not
to carry on
similar
business.

9. The vendor (h) shall not at any time hereafter, either solely or jointly, with, or as manager or agent for any other person or persons, or company, directly or indirectly, carry on, or be engaged, or concerned, or interested in the business of a mechanical engineer, nor permit or suffer his name to be used or employed in carrying on or in connection with the said business, within 100 miles of the said leasehold premises, save so far as the vendor shall as a member of the company be interested, or as an officer or servant or agent of the company be employed, in the said business agreed to be hereby sold: [And in case the vendor (i) shall commit any breach of the foregoing stipulation, he shall pay to the company the sum of —l., as liquidated damages in respect thereof].

Liquidated
damages.

(h) "The rule established by the modern decisions is in effect as follows:—

"An agreement not to carry on a particular trade or business is a valid contract if it satisfies the following conditions:—

"1. It must be founded on a valuable consideration.

"2. It must not be unlimited as to space.

"3. And the restriction must not go beyond what in the judgment of the Court is reasonably necessary for the protection of the other party, regard being had to the nature of the trade or business." *Pollock on Contracts*, p. 288. For tabular statement of the cases down to 1854, see *Avery v. Langford*, *Kay*, 667, and of those since then, see *Pollock*, 290. See also *Mitchel v. Reynolds*, *Smith's L. C.* p. 406, and the recent cases of *Catt v. Tourle*, 4 Ch. 654; *Leather Cloth Co. v. Lonsont*, 9 Eq. 345; *Gravelly v. Barnard*, 18 Eq. 518; *May v. O'Neill*, W. N. 1875, 179; 44 L. J. Ch. 660; *Allsopp v. Wheatcroft*, 15 Eq. 59. The Court will enforce such contracts by injunction. Unless otherwise provided, distances specified in contracts of this kind are to be measured as the crow flies, i.e., in a straight line on the map, *Moufet v. Cole*, L. R. 8 Ex. 32.

(i) Sometimes it is provided as above that a definite sum shall be paid as liquidated damages for breach of the agreement. For instances, see *Atkins v. Kinneer*, 4 Ex. 776; *Reynolds v. Budge*, 6 E. & B. 528; *Brampton v. Beddoes*, 13 C. B., N. S., 538.

The mere existence of an agreement for liquidated damages does not necessarily make a contract alternative, and preclude the interference of the Court by injunction; *French v. Macale*, 2 Dr. & W. 269; *Clarkson v. Edge*, 33 Beav. 227; 12 W. R. 518, and other cases cited in *Lindley*, 896. As to liquidated damages, see *Dav.*, Vol. II., Part I., 28; *Woodfall*, 350.

If, however, the sum be paid, the Court will not interfere by injunction *Sainter v. Fergusson*, 1 Mac. & G. 286; *Woodward v. Gyles*, 2 Vern. 119. Accordingly the following words are sometimes added, viz., "and the

receipt of that sum shall in nowise affect or prejudice the right of the company to obtain an injunction to prevent the continuance or repetition of such breach."

Proc. I.

10. The possession of the said premises shall be retained by the vendor up to the said — day of — next, and in the meantime he shall, at his own expense and for his own benefit, carry on the said business in the same manner as heretofore. All outgoings in respect of the said leasehold premises shall be discharged by the vendor up to the said — day of — next, and as from that day the outgoings in respect thereof shall be discharged and the possession taken by the company. Such outgoings shall if necessary be apportioned between the vendor and the company.

Possession prior to completion.
Profits.
Outgoings.

11. The company shall (j) undertake and perform the several contracts and engagements the benefit whereof is hereby agreed to be sold, and shall indemnify the vendor, his heirs, executors, and administrators, and his and their estates and effects, from and against all actions, proceedings, costs, and expenses, claims, and demands, in respect thereof.

Company to perform pending contracts.

(j) As to novation of contract, see Lindley, 450.

12. All books of account and other documents relating to the said business shall be handed over to the company on the completion of the purchase.

As to books of account.

13. Upon (k) the adoption of this agreement by the company, the said B. shall be discharged from all liability in respect thereof.

Discharge of B. from liability.

(k) As to this clause, see *supra*, p. 4, *et seq.*

14. If this agreement shall not be adopted by the company before the — day of — next, it shall be lawful for either of the parties hereto, by notice in writing to the other, to rescind (l) the same, and in case this agreement shall be so rescinded neither of the said parties hereto shall have any claim against the other for compensation, or expenses, or otherwise in relation hereto.

Power to rescind.

(l) The period to be allowed by this clause depends on circumstances. If the company is to be immediately incorporated, a few weeks will be sufficient. If before the time fixed, the agreement is not adopted, B. will rescind, in order to escape personal liability. So, too, this clause enables the vendor under similar circumstances to rescind. See further, *supra*, p. 6.

PREC. I.

AS WITNESS the hands of the said parties hereto the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

[*This will contain a description of the leasehold premises.*]

PRECEDENT II.

PREC. II.

AGREEMENT to GRANT LEASE of BRICK-WORKS to COMPANY.
Consideration Cash, Shares, Rent, and Royalty. Power to rescind. Arbitration Clause.

Parties.

Recitals.

Agreement to
grant lease.

AN AGREEMENT made the — day of —, between A. B., of — (hereinafter called the vendor), of the one part, and The — Company, Limited (hereinafter called the company), of the other part. WHEREAS the vendor has for some time past been and is now carrying on business as a brick-maker at —, in the county of —: AND WHEREAS the vendor is seised in fee simple of the piece of land specified in the first schedule hereto and delineated on the plan drawn in the margin hereof and therein coloured —, together with the buildings erected thereon: AND WHEREAS the vendor is absolutely entitled to the plant, barges, and other chattels and effects, specified in the second schedule hereto and hereinafter referred to as “the scheduled effects:” AND WHEREAS the company was incorporated, under the Companies Acts, 1862 and 1867, on the — day of — last: AND WHEREAS the capital of the company is 20,000*l.*, divided into 4000 shares of 5*l.* each: NOW IT IS HEREBY AGREED as follows:—

1. The vendor shall grant and the company shall accept a lease of the said piece of land and buildings, together with liberty for the company, its agents, workmen, and servants, to get and work the clay, sand, chalk, flints, and other materials used in the manufacture of bricks, in or under the said piece of land (*a*): and for that purpose to open, sink, dig, work, and make, any pits, drains, watercourses, fences, tramways, and roads, in, under, or upon the same piece of land or any part thereof: and also with liberty to convert and manufacture the said clay, sand, chalk, flints, and other materials, into bricks

PREC. II.

upon any part of the said piece of land, and to sell or otherwise dispose of the bricks so manufactured : and to build, (b) erect, set up, and maintain, on the said piece of land, all such engines, machinery, houses, kilns, sheds, huts, and other erections, as may be necessary or expedient for more effectually getting and working the said clay, sand, chalk, flint, and other materials, and converting and manufacturing the same into bricks to the best advantage, and disposing of the bricks when so manufactured.

(a) To dig for brick earth, &c., is *prima facie* waste ; therefore, express power must be given. Woodfall, 502, see *Clegg v. Rowland*, 2 Eq. 160.

(b) Express power should be given to erect buildings, &c. But it has now been settled that the lessee of land who erects a building thereon without the consent of his lessor, does not commit waste, within the definition in Co. Litt. 53a, unless it can be shown that such building is an injury to the inheritance, *Jones v. Chappell*, 20 Eq. 539.

2. The said lease shall be for a term of twenty-one years Term.
from the — day of — next.

3. The following rents and royalties shall be payable by the company during the said term : (i.) A yearly rent of £250, to be Rent and royalty.
payable half-yearly, on the — day of —, and — day of — in every year, the first of such payments to be made on the — day of — next. (ii.) If in any year during the said term there shall be manufactured on the said premises more than 10,000,000 bricks, then, in respect of every 1000 bricks manufactured in that year beyond such 10,000,000, there shall be paid a royalty of 6d., which shall be payable on such of the said half-yearly days hereinbefore mentioned, as shall happen in any year next after the said bricks shall have been burnt ready for delivery : Provided always that if in any year of the said term the company shall manufacture less than 10,000,000 bricks, then, and so often as such a contingency shall happen, the company shall in any succeeding year or years be at liberty, without paying any royalty therefor, to manufacture from and out of the said premises such number of bricks as shall be equal to the number by which the bricks manufactured in such preceding year or years shall have fallen short of 10,000,000.

4. The title of the vendor to grant the said lease shall not Title.
be investigated, nor shall the company make any requisition or objection in respect thereof (c).

(c) See n. (d), *supra*, p. 23.

Pres. II.

Covenants by
company to
be contained
in lease.

5. The said lease shall contain covenants (d) by the company to pay the rent and royalties hereinbefore specified at the time and in the manner hereinbefore mentioned, and also all present and future taxes, rates, charges, and assessments, and all other outgoings of every description for the time being payable by landlord or tenant in respect of or charged upon the premises : Also, for the purpose of ascertaining the amount of the royalty from time to time payable by the company, to keep proper and correct books of account, showing the number of bricks manufactured by the company, and previously to the — day of —, in the year —, and in every subsequent year of the said term, to deliver to the vendor or his agent a correct abstract of the said books of account for the then preceding year, and to verify the same if required by the production of proper vouchers, and by the statutory declaration of some officer of the company ; and to permit the vendor and his agents, at all reasonable times, to inspect the said books of account and take extracts therefrom : And at all times during the said term to keep the houses, sheds, and other buildings, now standing ; or which shall hereafter be erected or set up on the said piece of land, in good and substantial repair and condition, and to deliver up the same in such good and substantial repair and condition to the vendor at the expiration of the term ; and to carry on the works and operations by the said lease to be authorised in a proper and workmanlike manner, and after the best and most approved method of carrying on similar works in the neighbourhood : And to permit the vendor or his agent or agents at any reasonable time during the daytime to enter upon the demised premises and view the works carried on there : And not to assign, underlet, or part with the possession of any part of the said premises during the said term without the previous license in writing of the vendor.

(d) Unless all the clauses and stipulations to be contained in the lease are inserted literally in the agreement there is always room for dispute in framing the lease ; in order to avoid dispute, the agreement sometimes provides that the lease shall be in the form set forth in the schedule hereto, and the form is given at full length in the schedule ; when this cannot be done, the plan adopted in this precedent of specifying the covenants and stipulations with considerable particularity should be adopted : it is far less likely to lead to dispute than an agreement which provides for a lease to contain the "usual covenants." As to what are the "usual covenants," see Dav. V., Part I., 53.

6. The said lease shall also contain the usual qualified covenant by the vendor for quiet enjoyment by the company, and covenants by the vendor [that he will not, during the said term, &c. *If desired provision may here be made, that the vendor shall not carry on the business or trade of a brickmaker, say, "at any place within fifty miles of the present post-office at — aforesaid."* See *supra*, p. 24], to permit the company, at any time within two calendar months next after the expiration, or other sooner determination of the said term, to remove and dispose of all such bricks as shall then have been burnt ready for delivery, and deposited upon the said premises, the company having duly performed and observed the several covenants by it to be contained in the said lease as hereinbefore provided: And a proviso or condition authorising the re-entry of the vendor upon the said premises on non-payment of the said rents or royalties, or any part thereof (whether the same shall have been legally demanded or not), for the space of twenty-one days, or (e) on breach of all or any of the covenants by the company, to be contained in the said lease.

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Covenant by vendor to be contained in lease.

(e) It was held in the recent case of *Hodgkinson v. Crowe*, 10 Ch. 622, that under an agreement for a lease to contain "all usual and customary mining clauses," the landlord was not entitled to have inserted in the lease a proviso for re-entry on breach of any of the covenants by the lessee or otherwise, than on non-payment of rent. See the judgment of James, L. J., from which it appears that, in his Lordship's opinion, the rule applies in all cases, and that if the landlord desires to reserve a right of re-entry, otherwise than for non-payment of rent, he must provide accordingly by the agreement. It is needless to observe that a power of re-entry on breach of any of the covenants affords the lessor increased security for their performance.

7. The company shall pay to the vendor, as a premium for the said lease, the sum of 5,000*l*. Premium.

8. The vendor shall also, in consideration of the sum of 3,000*l*, sell, and the company shall purchase the said schedule effects and the good-will of the said business now carried on upon the said premises, and the full benefit of all contracts for the sale of bricks now subsisting in connection with the said business, and not yet fully performed.

Sale of chattels, good-will, and contracts.

9. The company shall perform and fulfil the said contracts mentioned in Clause 8 hereof, and shall indemnify the vendor,

Company to perform certain contracts.

Prec. II. his heirs, executors, and administrators, and his and their estates and effects, from and against all actions, and other proceedings, costs, damages, claims, and demands, in relation thereto.

Part payment
in shares.

10. The said sums of 5,000*l.* and 3,000*l.*, making together the sum of 8,000*l.*, shall be paid and satisfied as follows, namely, as to 4,000*l.* part thereof by the allotment to or to the nominees (*f*) of the vendor, of 800 shares in the company of 5*l.* each, which shares shall be numbered (*g*) — to — inclusive in the books of the company, and shall be deemed to be fully paid up. The said shares shall be included in the first (*h*) allotment of shares.

(*f*) As to the validity of this, see *supra*, p. 11.

(*g*) See *supra*, p. 10.

(*h*) See Clause 16, *infra*, p. 31.

Residue in
cash.

11. The residue of the said sum of 8,000*l.*, namely, 4,000*l.*, shall be paid as follows, namely, 1,000*l.* part thereof within fourteen days after the first (*i*) allotment of shares, and the residue thereof by three equal instalments at the expiration of two, four, and six months after the first allotment of shares. The payment of the said three instalments shall be secured to the vendor by three bills of exchange for 1,000*l.* each, to be drawn by the vendor upon and accepted by the company.

(*i*) See Clause 16, *infra*, p. 31.

Power to
vendor to ac-
cept payment
in shares.

12. At any time before the said three bills of exchange shall respectively have been paid, the vendor shall (subject to the following proviso) have the option of accepting satisfaction of the same, or any of them, in fully paid-up shares of the company, such shares to be taken at par. And upon receiving notice in writing from the vendor, signifying his desire to exercise such option, the directors of the company shall give effect thereto if there shall be a sufficient number of shares in the company remaining unallotted: Provided always that, before any allotment shall be made for the purpose of giving effect to such option, the vendor shall surrender to the directors the bill or bills of exchange in respect whereof the same is exercised.

Execution
of lease.

13. Upon the payment of the said sum of 1,000*l.*, being the first instalment of the cash portion of the purchase-money,

and the allotment of the said 1,500 shares, the vendor shall execute a lease to the company of the lands agreed to be hereby demised. Such lease shall be prepared by the solicitor of the company, and shall be left for execution at the office of Messrs. —, the vendor's solicitors, — days at least before the vendor shall be required to execute the same. And the vendor shall also execute and do all such other assurances and things as may reasonably be required by the company for carrying this agreement into effect.

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14. The company shall execute and deliver to the vendor a counterpart of the said lease, and shall pay all the costs, charges, and expenses of and incident to the preparation and registration of these presents, and of the memorandum and articles of association of the company, and of the said lease and counterpart, and of such other assurances and things as aforesaid, and generally all costs, charges, and expenses in relation to the formation and establishment of the company, and shall indemnify the vendor against the same.

Counterpart.
Vendor to pay
preliminary
expenses.

15. Upon such payment and allotment of shares as is mentioned in Clause 10 hereof, the company shall be entitled to the possession of the premises; and, in the meantime, the vendor shall retain the same, and shall carry on the said business at the expense and for the benefit of the company. The vendor shall pay all outgoings in relation to the said premises up to the date hereof, and if necessary, for the purpose of this condition, there shall be an apportionment between the vendor and the company of such outgoings.

Possession.

16. If no allotment of shares in the company, other than that already made, shall have been made before the — day of —, either of the parties hereto, at any time after that day, and before an allotment shall have been made, may, by notice in writing to the other, rescind this agreement, and, in case the same shall be so rescinded, neither party shall have any claim upon the other for compensation, costs, expenses, or otherwise, in respect thereof.

Power to
rescind.

17. By the expression, "the first allotment of shares," hereinbefore used, is meant the first allotment of shares in the company, which shall be made after the execution hereof.

Meaning of
"first allot-
ment of
shares."

18. If any doubt, question, difference, or dispute shall arise between the parties to these presents, touching these presents, or the construction thereof, or any clause or thing herein con-

Arbitration.

Prec. II. tained, or any matter in any way connected with these presents, or the operation thereof, or the rights, duties, or liabilities of either party in connection with the premises; then and in every or any such case, the matter in difference shall be referred to two arbitrators or their umpire, pursuant to and so as with regard to the mode and consequences of the reference, and in all other respects to conform to the provisions in that behalf contained in the Common Law Procedure Act, 1854, or any then subsisting statutory modification thereof; And upon every or any such reference the costs of and incident to the reference and award respectively shall be in the discretion of the arbitrators or umpire respectively, who may determine the amount thereof, or direct the same to be taxed, as between solicitor and client, or as between party and party, or otherwise, and may award by whom and to whom and in what manner the same shall be borne and paid; And every or any such reference shall be made a rule of Her Majesty's High Court of Justice upon the application of either party, and such party may instruct counsel to consent thereto for the other parties.

As to arbitration, see *infra*, p. 33.

IN WITNESS whereof the vendor hath hereunto set his hand, and the Company hath caused its common seal to be hereunto affixed, the day and year first above written.

[Or, "IN WITNESS whereof the vendor, and — and —, two of the directors of the Company, on its behalf, have hereunto set their hands the day," &c. See further, *supra*, p. 16, *et seq.*

THE SCHEDULES ABOVE REFERRED TO.

SCHEDULE I.

[To contain the description of the lands.]

SCHEDULE II.

[To contain the particulars of the chattels, &c.]

ARBITRATION.

The following are some of the effects and consequences of a submission framed as above :—

In case of the death, refusal to act or incapacity of any arbitrator appointed by either party, such party will be entitled to substitute a new arbitrator.—Section 13 of the Common Law Procedure Act, 1854 (in this note referred to as “the Act”).

If one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing, to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference. And an award by him will be binding on both parties as if the appointment had been by consent. However the Court or a judge may revoke such appointment, on such terms as shall seem just.—Section 13 of the Act ; and see *Gillett v. Thornton*, 19 Eq. 599.

If the arbitrators do not appoint an umpire, then either party may serve the arbitrators with a written notice to appoint an umpire ; and if, within seven clear days after such notice shall have been served, no umpire be appointed, any judge of the High Court, upon summons to be taken out by the party having served such notice, may appoint an umpire. Such umpire will have the like power to act in the reference, and make an award as if he had been appointed by consent of all parties.—Section 12 of the Act.

The two arbitrators may appoint an umpire at any time within the period during which they have power to make the award, unless they are called upon by notice as above mentioned to make the appointment sooner.—Section 14 of the Act.

The arbitrator acting under such a submission as above must make his award under his hand within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from either party, but the parties may consent in writing to enlarge the term for making the award ; and the Court or any judge thereof, for good cause to be stated in the rule or order for enlargement, may from time to time enlarge the time for making the award.—Sec. 15 of the Act. See L. R. 2 Q. B. 523.

The Court has jurisdiction to enlarge the term, notwithstanding that the time for making the award has elapsed, and has in some cases exercised it.—*In re Warner and Powell's Arbitration*, 3 Eq. 261 ; *Lord v. Lee*, 37 L. J. Q. B. 121 ; *Watson v. Beavan*, 8 W. R. 612.

In any case where an umpire shall have been appointed, he may enter upon the reference in lieu of the arbitrators, if the latter shall have allowed their time, or their extended time, to expire without making an award, or shall have delivered to any party, or to the umpire, a notice in writing that they cannot agree.—Section 15 of the Act.

The arbitrator may state his award as to the whole or any part of it in the form of a special case for the opinion of the Court.—Section 5 of the Act.

The authority of an arbitrator appointed under an agreement as above, providing that the submission shall be made a rule of Court, is irrevocable, except by leave of the Court ; and the arbitrator is bound to proceed with the reference, notwithstanding any such revocation, and to make

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his award, although the person making the revocation does not afterwards attend the reference.—3 & 4 Will. IV., c. 42, s. 39.

Hence the importance of expressly providing that the submission shall be made a rule of Court. In the absence of such a provision, the submission may be revoked, notwithstanding Section 17 of the Act, which is as follows: "Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the Superior Courts of Law or Equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court, &c."—*Mills v. Bayley*, 2 H. & C. 36; *Thompson v. Anderson*, 9 Eq. 523; *Re Rouse v. Meier*, L. R. 6 C. P. 212. See also *Randall v. Thompson*, 1 Q. B. Div. 748; and Russell on Arbitration, 145.

"The application to make a submission a rule of Court is by motion, which must be on notice unless the submission provides that either party may make it an order of the Court without notice to the other party; and the execution of the submission must be proved, unless the application is consented to."—Daniel Ch. Pr. 1902.

The object of inserting the words, "and such party may instruct counsel to consent thereto for the other parties" in Clause 17, *supra*, p. 32, is to avoid the necessity of having to prove the execution of the submission, and give notice to the other party of the application to the Court.

It is expedient to give the arbitrator power to award costs, for in the absence of express authority he has no power to adjudicate respecting them (Russell on Arbitration, 354); and each party must bear his own expenses of the reference, and is liable to half the costs of the award; nor in the absence of express authority can the arbitrator order the costs to be taxed as between solicitor and client.—*Ibid.* 360.

The Court or a judge may at any time and from time to time remit the matters referred or any of them to the reconsideration and redetermination of the arbitrator upon such terms as to costs and otherwise as to the Court or judge may seem proper.—Section 8 of the Act. *Warner and Porcell's Arbitration*, 3 Eq. 261. See also Dan. Ch. Pr. 1905.

An arbitrator who has signed his award is *functus officio*, and cannot even correct a clerical error. Hence the value of the above section.

The proceedings upon any such arbitration shall be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award and otherwise, as upon a reference made by consent under a rule of Court or judge's order.—Section 7 of the Act. It was at one time doubted whether this section applied in case of an arbitration upon a submission in writing, but there seems now no doubt that it does.—*Rouse v. Meier*, L. R. 6 C. P. 221. See also Russell on Arbitration, 170. Under this section, coupled with Section 40 of 3 & 4 Will. IV., c. 42, the attendance of witnesses and the production of documents can be compelled.—*In re Ackary*, 3 Ch. Div. 125.

By Lord Brougham's Act of 1851, to amend the Law of Evidence, it is provided that "Every judge, officer, commissioner, arbitrator, or other person now or hereafter, having by law or by consent of parties authority to hear, receive and examine evidence, is hereby empowered to ad-

minister an oath to all such witnesses as are legally called before them respectively." 14 & 15 Vict. c. 99, s. 16.

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By Section 11 of the Act, it is provided that "Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them, shall be referred to arbitration; and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred or any of them, it shall be lawful for the Court in which the action is brought or any judge thereof, on application by the defendant or defendants, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to the agreement; and that the defendant was at the time of bringing such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided, to make a rule or order staying all proceedings in such action on such terms as to costs or otherwise, as to such Court or judge may seem fit. Provided always that such rule or order may at any time afterwards be discharged or varied as justice may require." See the cases of *Willesford v. Watson*, 8 Ch. 473; *Gillett v. Thornton*, 19 Eq. 599; *Randall v. Thompson*, 1 Q. B. Div. 748.

By Section 72 of the Companies Act, 1862, it is provided that "Any company under this Act may from time to time, by writing under its common seal, agree to refer, and may refer to arbitration, in accordance with 'The Railway Companies Arbitration Act, 1859,' any existing or future difference, question, or other matter whatsoever, in dispute between itself and any other company or person; and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made, power to settle any terms, or to determine any matters capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies."

And by Section 73 of the same Act, it is provided that "All the provisions of 'The Railway Companies Arbitration Act, 1859,' shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of such provisions, 'the companies' shall be deemed to include companies authorised by this Act to refer disputes to arbitration."

The power given by these sections is but seldom exercised. The submission must, it will be observed, be under seal. A reference in accordance with "The Railway Companies Arbitration Act, 1859," has this advantage, namely, that it ousts the jurisdiction of the Courts. See *Watford, &c., Ry. Co. v. London & N. W. Ry. Co.*, 8 Eq. 231.

The Act of 1859 contains a simple and complete code of regulations as to references so made. It will be found at full length in Russell on Arbitration, p. 860, and in Lathom Brown, 434. It does not, however, enable the arbitrator to award costs as between solicitor and client; and though the submission can be made an order of Court on the application of any party interested, yet there is no provision dispensing with notice to the other parties. It is well, therefore, to provide for these matters in the submission. The above clause (p. 32) can readily be altered, so as to apply to a submission in accordance with "The Rail-

Prec. II. way Companies Arbitration Act, 1859." A submission may be so framed that no action can be brought until after there has been a reference. See *Scott v. Avery*, 5 H. L. Cas. 811 ; 25 L. J. Ex. 308 ; *Edwards v. Aberavon, &c.*, Society, 1 Q. B. Div. 563 ; *Darson v. Fitzgerald*, 1 Ex. Div. 257.

PRECEDENT III.

Prec. III. AGREEMENT FOR SALE to COMPANY of FOREIGN MINES. *Premises to be inspected on behalf of Company. Consideration : Cash, Shares, and Debentures. Vendor to guarantee 10 per cent. on Capital for three Years. Vendor to pay Preliminary Expenses.*

Parties. AN AGREEMENT made the — day of —, between A., of — (hereinafter called the vendor), of the first part, and the — Company, Limited (hereinafter called the company), of the other part.

Recitals. WHEREAS the nominal capital of the company is 200,000*l.*, divided into 20,000 shares of 10*l.* each ; AND WHEREAS the company has been formed, among other things, for the purpose of acquiring the property hereinafter described :

NOW IT IS HEREBY AGREED AS FOLLOWS:—

Agreement for sale.

1. The vendor shall sell and the company shall purchase : All and singular the lands, mills, orehouses, mines, and mining rights, hereditaments and privileges specified in the first schedule hereto : And also all the plant, machinery, stock, implements, and effects in or belonging to the said mines, mills, and premises :

Inspection to be made on behalf of the company.

2. The said premises shall be forthwith inspected by some competent person to be appointed by the company, and unless such inspection shall have been made and the result thereof be declared satisfactory by the directors of the company before the — day of — next, this agreement shall as from that day become void, and in such case no claim for costs, damages or otherwise shall, save as hereinafter provided, accrue either to the vendor or to the company in respect thereof (a).

(a) This is a clause which, with more or less modification, is very commonly adopted. Compare with the clause in agreement of *The Western of Canada Oil, &c., Co., Carling's Case*, 1 Ch. Div. 116.

3. The vendor shall make out to the satisfaction of the company or its agent a good title, free from incumbrances, according to the laws in force in the state of —, in the United States of America, to the said premises ; And, before the — day of — next, shall transfer the same premises or procure the same to be transferred to the company or its nominee or nominees.

Prec. III.

Title of
vendor.
Transfer.

4. The consideration for the said sale shall be the sum of 100,000*l.*, whereof 50,000*l.* shall be paid and satisfied by the allotment to the vendor or his nominees (*b*) on the — day of — next, of 6,250 shares in the company of 10*l.* each, upon each of which the sum of 8*l.* shall be credited on the books of the company as having been paid-up. The said 5,000 shares shall be numbered in the books of the company with the numbers — to — inclusive (*c*).

Consideration:
shares, cash,
and debentures.

(*b*) See *supra*, p. 11.

(*c*) As to giving the number, see *supra*, p. 10.

5. 20,000*l.*, further part of the said sum of 100,000*l.*, shall be paid to the vendor on the — day of — next, in cash ; and the residue of the said sum of 100,000*l.*, namely, 80,000*l.*, shall be satisfied on that day by the issue to the vendor of 600 debentures (*d*) for 50*l.* apiece, such debentures to be in the form set forth in the schedule hereto.

As to payment
of cash and
issue of de-
bentures.

(*d*) A vendor is generally desirous that the debentures should be "to bearer;" they are more saleable. For forms of debentures, &c., see Index, under "Debentures." The form selected may be with or without provisions for drawings on redemption.

6. Possession of the said premises shall be given to the company on the — day of — next, and the vendor shall, in the meantime, keep the same in good repair and condition, and shall work the said mines, mills, and premises in as full and effectual a manner as the same has been hitherto worked. As from the 1st day of — last the said premises, and the produce of the said mines and mills, shall be deemed to have belonged to the company, and as from that day all the expenses of and incident to the working thereof shall be borne and paid by the company. The vendor shall pay all expenses and outgoings in respect of the said premises and the working

Possession,
profits, and
outgoings.

Prec. III. thereof up to the said 1st day of — last, and if necessary such expenses and outgoings shall be apportioned between the vendor and the company.

Guarantee of
profits by
vendor.

7. Upon payment of the cash portion of the purchase-money the vendor (e) shall enter into a covenant with the company guaranteeing that the net profits of the company in respect of the said business during each of the three years next following the — day of — next shall amount to not less than [10] per cent. per annum on the capital of the company for the time being employed therein, and that if there shall be a deficiency in any of the said three years the vendor, his heirs, executors, or administrators, shall immediately after the same shall have been ascertained and notice thereof given to him or them, pay to the company the amount thereof. The certificate in writing of the auditor or auditors for the time being of the company of the existence and amount of any such deficiency shall, as against the vendor, be conclusive evidence thereof for the purposes of this clause.

(e) Such a clause as the above is sometimes inserted.

It must be borne in mind that a guarantee is strictly construed. In a recent case where a company had purchased some railway-tire and iron-works and steel rolling-mills, and the vendor had given a guarantee as to profits, it was held that the company having discontinued the tire-works the guarantee was gone. *Brown & Co. v. Brown*, before Bacon, V.-C., reported in *Times*, 26 July, 1876.

Whether it would be legal for the company to apply monies received under such a clause in payment of dividend, is perhaps open to doubt. It might be contended that to do so would amount to an indirect payment of dividend out of capital. See *James v. Eve*, 6 L. R. H. L. 344. See also *In re Stuart's Trusts*, 4 Ch. Div. 213.

Very commonly where a guarantee is given as above, the performance is secured by the deposit by vendor of shares or cash in the hands of trustees.

Vendor to pay
preliminary
expenses.

8. The vendor shall pay all the costs of and incidental to the preparation and execution of this agreement, and of the memorandum and articles of association of the company, and of the registration thereof, and of all stamps, fees, and legal expenses incident to the formation of the company, and generally of all preliminary expenses whatever incurred in relation to the company up to the incorporation thereof; and, if the result of the inspection to be made pursuant to Clause 2 hereof, shall be unsatisfactory to the company, or if the vendor

shall fail to show a good title to the said premises, the vendor shall also pay the costs, charges, and expenses incurred by the company in relation to such inspection, but so that such last mentioned costs, charges, and expenses shall not exceed ——. **Prec. III.**

If any, &c. [*supra*, p. 31].

Arbitration.

IN WITNESS, &c. [*see supra*, p. 32].

THE SCHEDULE ABOVE REFERRED TO.

[*Form of Debenture.*]

PRECEDENT IV.

AGREEMENT for SALE to COMPANY of FOREIGN CONCESSION. **Prec. IV.**

Consideration: Cash and Shares. Working Capital to be raised by issue of Debentures. Power to rescind if Public do not respond.

AN AGREEMENT made the — day of —, between Parties.
A., of, &c., (hereinafter called the vendor), of the one part,
and B., of, &c., and C., of, &c., on behalf of the — Company,
Limited (hereinafter called the company), of the other part :
WHEREAS the vendor is entitled to a concession, dated, &c., Recitals.
and granted to him by His Majesty the King of X. for the
construction of a —, and other works, at —, in the
kingdom of X. : AND WHEREAS the said concession is in full
force and the obligations thereby imposed on the vendor have
been duly performed and fulfilled up to the date hereof : AND
WHEREAS the company has been incorporated under the Com-
panies Acts, 1862 and 1867, for the purpose of acquiring the
benefit of the said concession, and for other purposes set forth
in the memorandum of association thereof : AND WHEREAS
the nominal capital of the company is 100,000*l.*, divided into
10,000 shares of 10*l.* each : AND WHEREAS it is intended to
offer for public subscription 4,000 mortgage debentures of the
company for 20*l.* a piece (*a*), which debentures are to bear interest
at the rate of 6 per cent. per annum, and to be paid off at the

Prec. IV. expiration of seven years from the — day of —, with power nevertheless for the company to pay off the same previously on giving six months' notice by advertisement : AND WHEREAS a prospectus, inviting applications for the said debentures, has, with the privity and approval of the vendor, been prepared and is about to be issued :

(a) Or the form of debenture may be given in a schedule. See *supra*, p. 37, Clause 5.

NOW THEREFORE IT IS HEREBY AGREED as follows :—

Agreement to sell.

1. The vendor shall sell and the company shall purchase the said concession and the rights and privileges thereby granted, and the full benefit thereof, and all the right, title, claim, and demand of the vendor therein and thereto.

Consideration.

2. The consideration for the said sale shall be the sum of 80,000*l.*, which shall be paid and satisfied as follows, namely, as to 25,000*l.* part thereof in cash, and as to 55,000*l.* the residue thereof by the allotment to the vendor, or his nominees as hereinafter provided, of 5,500 fully paid-up shares in the company.

Issue of prospectus.

3. The directors of the company shall forthwith issue, publish, and advertise the said prospectus, and shall use their best endeavours to procure applications for the said debentures.

No allotment of debentures to be made except on certain conditions.

4. Until (b) the directors of the company shall have received applications, which in their opinion shall be satisfactory, for 1000 at least of the said debentures, they shall not make any allotment thereof without the consent in writing of the vendor.

(b) In this case the vendor is supposed to desire that no allotment shall be made unless the public take up a sufficient number of debentures to enable the company to start with a fair chance of success.

See the power for either party to rescind, before an allotment has been made, contained in Clause 14, *infra*.

When directors bound to make allotment of debentures.

5. When (c) and so soon as the directors of the company shall have received applications, which in their opinion shall be satisfactory, for 1500 of the said debentures, they shall forthwith proceed to an allotment thereof.

(c) The vendor is supposed to desire that an allotment shall be obligatory in a certain event.

6. The said 25,000*l.* cash shall be paid as follows, namely : **Prec. IV.**
 one moiety of the moneys from time to time received by the company in respect of each of the said 4000 debentures which shall be allotted by the directors, shall, within fourteen days after the receipt thereof by the company, be paid to the vendor until, by means of such payments, the said sum of 25,000*l.* shall have been fully paid and satisfied, together with interest, at the rate of 5 per cent. per annum, on so much thereof as shall for the time being remain owing, such interest to be computed from the — day of — next. All moneys so paid shall be applied in the first place in or towards the discharge of all interest due to the vendor in respect of the said sum of 25,000*l.*, or so much thereof as shall for the time being remain unpaid. How cash to be paid.

7. If any part of the said sum of 25,000*l.*, or any interest due in respect thereof, shall remain unpaid on the — day of — next, the same shall be paid to the vendor on that day, and, if default be made in the payment thereof, shall as from that day carry interest at the rate of 10 per cent. per annum. Interest.

8. At any time before the whole of the said sum of 25,000*l.* shall have been paid, and while any of the said 4,000 debentures shall remain unallotted, the vendor may, by notice in writing to the company, elect to accept any of the same debentures in satisfaction *pro tanto* of the balance then remaining unpaid of the said sum of 25,000*l.*, and of any interest in respect thereof, and upon the footing that each debenture so to be accepted by him shall be considered to be of par value; and upon the receipt of any such notice the company shall forthwith give effect to such election. Power to vendor to take debentures in satisfaction of cash.

9. The said 5,500 shares in the company shall be allotted to the vendor or to his nominees (*d*) within fourteen days after the first allotment of the said 4,000 debentures or any of them shall have been made, and such shares shall be deemed for all purposes to be fully paid up and shall be numbered (*e*) in the books of the company — to — inclusive. When the shares to be allotted to vendor.

(*d*) See *supra*, p. 11.

(*e*) See *supra*, p. 10.

10. The vendor shall, before the — day of — next, make out to the satisfaction of the company a good title to Title to concession.

Prec. IV. the said concession, and shall, to the like satisfaction, prove that it is in full force, and in nowise void or voidable.

Assignment
of concession.

11. When and so soon as there shall have been paid to the vendor a sum of not less than 5,000*l.* in respect of the said sum of 25,000*l.* the company shall be entitled to an assignment of the said concession, and the vendor shall at any time thereafter, upon the request of the company, execute and do all such assurances and things as shall be reasonably required of him by the company for vesting the said concession in the company or its nominee or nominees.

Vendor to ob-
tain necessary
consents.

12. The vendor shall, at his own expense, procure the consent of the X. Government, and such other consents as may be necessary for effecting the said assignment.

Vendor to be
indemnified
as regards
concession.

13. The company shall perform and fulfil the obligations and conditions imposed on the vendor by the said concession, so far as the same now remain to be performed and fulfilled, and shall indemnify the vendor against all actions, proceedings, liabilities, claims, and demands, by the X. Government, or by any person whomsoever in relation thereto.

Power to
rescind.

14. At any time after the — day of — next, provided none of the debentures shall have been allotted, the vendor and the company shall each be at liberty, by notice in writing to the other, to rescind this agreement (*f*).

(*f*) See *supra*, p. 25, n. (2).

Arbitration.

15. If any, &c. [*supra*, p. 31].

AS WITNESS the hands of the said parties hereto, the day and year first above written.

A.

B. } By the authority and on
C. } behalf of the company (*g*).

Witness, &c.

(*g*) See *supra*, p. 16 *et seq.*, as to modes of executing an agreement "on behalf" of a company.

PRECEDENT V.

AGREEMENT for SALE to INTENDED COMPANY of the BUSINESS **Prec. V.**
of a WAREHOUSEMAN. VENDORS in PARTNERSHIP. Con-
sideration: Cash and Deferred Shares. Vendors to Covenant
not to carry on similar Business, and not to part with
Shares for a fixed period.

AN AGREEMENT made the — day of —, between A., Parties.
 of —, B., of —, C., of —, and D., of —, trading in
 partnership together as warehousemen, under the firm of M. A.
 and Co. (hereinafter called the vendors) of the one part, and
 E., of —, on behalf of the company intended to be formed
 as hereinafter mentioned, of the other part.

WHEREAS the vendors have for some time past carried on Recitals.
 business together in partnership as warehousemen at —, in
 the city of —: AND WHEREAS the vendors are the sole
 members of the said firm: AND WHEREAS the said intended
 company (hereinafter called the company) is about to be
 formed under the Companies Acts, 1862 and 1867, with the
 name of The — Company, Limited: AND WHEREAS the
 memorandum and articles of association of the company
 have, with the privity of the vendors, been already prepared,
 and a printed copy thereof has, for the purpose of identifica-
 tion, been marked with the letter A. and indorsed with the
 signatures of the vendors respectively: AND WHEREAS the
 nominal capital of the company is to be the sum of 800,000*l.*,
 divided into 15,000 shares of 20*l.* each, whereof 5,000 are to
 be called “A. shares,” and to have certain preferential rights,
 and the remaining 10,000 are to be called “deferred shares”:
 AND WHEREAS the said articles of association provide that
 the directors of the company shall immediately after the in-
 corporation thereof, adopt and carry into effect an agreement,
 being these presents, a copy whereof is set forth in the schedule
 thereto.

NOW THEREFORE IT IS HEREBY AGREED as follows:—

1. The vendors shall sell and the company shall purchase Agreement
 the following property:— to sell.

First, all and singular the leasehold hereditaments belonging Parcels.

Prec. V. to the said firm, which are specified in the first schedule hereto, subject as to part thereof, namely, No. —, — Street, to the two several indentures of mortgage for securing the principal sums of 15,000*l.*, and 5,000*l.* and interest, respectively specified in the same schedule ;

Secondly, all the plant, machinery, and furniture, in and about the said premises, and the chattels and effects specified or referred to in the second schedule hereto ;

Thirdly, the stock-in-trade, and the benefit of all contracts and engagements to which the vendors shall, on the — day of — next, be entitled to in relation to the said business ;

Fourthly, the good-will^(a) of the said business, with the exclusive right to use the name of “ M. A. & Co.,” or “ M., Brothers,” as part of the name of a company, and to represent such company as carrying on such business in continuation of the said firm of M. A. & Co., and in succession thereto, and the right to use the words “ late M. A. & Co.,” or any other words indicating that the business is carried on in continuation of or succession to the said firm.

(a) As to good-will, see Lindley on Part. 3rd ed. p. 884.

Consideration. 2. The consideration for the said sale shall be as follows, namely, for the property first mentioned, 52,330*l.* ; for the property secondly mentioned, 9,400*l.* ; for the property thirdly mentioned the value thereof to be ascertained as hereinafter provided ; and for the property and privileges fourthly mentioned, 10,000*l.*

Valuation to be made of part of the property. 3. The value on the — day of — next of the said property thirdly mentioned, shall be ascertained and determined by Messrs. — & —, of —, or by some person to be appointed by them.

The deferred shares to be allotted in part satisfaction of purchase money 4. The said sums of 52,300*l.*, 9,400*l.*, and 10,000*l.*, and the sum of 108,300*l.*, part of the amount of the valuation to be made pursuant to Clause 3 hereof, making together 200,000*l.*, shall be paid and satisfied by the allotment to the vendors of the said 10,000 deferred shares in the company, on each of which shares the sum of 20*l.* shall be credited in the books of the company as having been paid up.

How shares to be allotted. 5. The said 10,000 deferred shares shall be allotted to the vendors in the proportions following : namely, to the said A.

4,000 of such shares, to the said B. 2,500 of such shares, to the said C. 2,000 of such shares, and to the said D. the residue of such shares. **Prec. V.**

6. The company shall undertake and pay the said mortgage debts of 15,000*l.* and 5,000*l.*, and all interest to become due thereon as from the — day of —, and shall indemnify the vendors respectively, and their respective heirs, executors, administrators estates and effects from and against payment of the said mortgage debts and interest, and from and against all actions, claims and demands, under or in respect of the said indentures of mortgage or either of them. Company to undertake the two mortgages.

7. The residue of the valuation to be made as aforesaid shall be paid in cash, as to 30,000*l.*, part thereof, at the time fixed for the completion of the purchase, and as to the residue by three equal instalments, on the — day of —, the — day of —, and the — day of —; and any instalment not paid at the time hereby appointed for the payment thereof shall thenceforth, until payment, bear interest at the rate of 5 per cent. per annum. How cash portion of the purchase money to be paid.

8. The purchase shall be completed on the — day of — next, and at four o'clock in the afternoon of that day possession of the property agreed to be hereby sold shall be given to the company, provided that the company shall duly pay the said sum of 30,000*l.* and allot the said shares pursuant to clauses 4 and 5 hereof. When purchase to be completed.

9. In the meantime the business shall be carried on by the vendors in the ordinary and usual manner, so as to maintain the business as a going concern without unduly pressing sales, and no sales being made except in the ordinary way of business and at the ordinary profit. Meantime vendors to carry on the business.

10. As from the — day of — next until the time fixed for completion the vendors shall be considered to be carrying on the said business on account and for the benefit of the company. Business to belong to company from a day certain.

11. On or at any time after the — day of — next, the vendors shall at the expense of the company execute and do all such assurances and things as may reasonably be required by the company for vesting in it the property agreed to be hereby sold, and giving to it the full benefit of the said sale. As to assurances and things for carrying sale into effect.

12. The vendors shall procure from the respective landlords of the said leasehold premises any licences which may Vendor to procure licence

Prec. V.

to assign
leaseholds.

Title to
leaseholds.

be necessary for the assignment thereof pursuant to this agreement.

13. The title to the said leasehold premises shall commence with the respective leases under which the vendors hold the same, and the company shall not (b) call for the production of or investigate or make any objection or requisition in respect of the title of the respective lessors, or the right to grant the respective leases, and the production of a receipt for the last payment of rent accrued previously to the — day of — next, shall be conclusive evidence that all the covenants and conditions in the lease under which such rent is payable have been performed and observed up to the said — day of —.

(b) See *supra*, p. 23, n. (d).

Vendors to be
indemnified
against con-
tracts, &c.

14. The company shall indemnify the vendors against all actions and proceedings, claims and demands, in respect of the said contracts and engagements in relation to the said business, the benefit whereof is agreed to be hereby sold.

15. The company shall be entitled to the benefit of the current fire insurance of the said leasehold premises and stock in trade.

Outgoings.

16. The vendors shall discharge all outgoings in respect of the said leasehold premises up to the — day of — next, and as from that day the company shall discharge the same, and such outgoings shall if necessary be apportioned for the purpose of this clause.

Books of
account.

17. All books of account of the said firm, and all books of reference to customers, and all other books and documents of the said firm (except such as relate exclusively to the private affairs of the said firm or the individual members thereof), shall be delivered by the vendors to the company on possession being given of the premises, pursuant to the provision in that behalf hereinbefore contained, and the company shall thenceforth, subject to the following proviso, be entitled to the custody thereof, and to the use thereof for the purposes of carrying on its business, but the vendors shall have free access, at all reasonable times, to such of the said books and documents as show or relate to the outstanding book-debts and credits of the vendors, or may otherwise be requisite for enabling the vendors to collect and get in the assets of the said firm not hereby agreed to be sold, and to liquidate the affairs thereof; Pro-

vided always that when and so soon as any of the said books of reference and other books shall cease to be necessary for the carrying on of the said business, the same shall be delivered over to the vendors, who shall thereupon become absolutely entitled thereto.

Prec. V.

18. The vendors shall be entitled to such accommodation as they may reasonably require in the counting-house of the company, in the said leasehold premises, for the purpose of collecting the book and other debts due to the said firm in respect of the said business and liquidating the affairs thereof; and the vendors shall make all such book and other debts payable at the said premises, and at no other place, the object being to secure the continued resort of the customers of the said firm to the said premises, and so to give to the company the full benefit of the good-will of the said business.

Accommodation in office to be given to vendors.

19. Each of the vendors shall upon the request and at the costs of the company enter into a covenant with the company that he will not during the period of twenty years from the date hereof either solely [see *supra*, p. 24, Clause 9, *mutatis mutandis*].

20. Each of the vendors shall, if he shall so long live, retain and hold in his own name the whole of the shares to be allotted to him pursuant to Clause 5 hereof for a period of six calendar months from the allotment thereof, and shall retain and hold in his own name at least 75 per cent. of the said shares for a period of five years from the time of such allotment (c).

Vendors to hold shares for certain period.

(c) Such a clause as the above is occasionally inserted.

21. Upon the adoption [*supra*, p. 25].

22. If this agreement [*supra*, p. 25].

23. If any doubt, &c., shall arise between the parties hereto, or between the vendors and the company, &c. [*supra*, p. 31.]

AS WITNESS, &c.

THE SCHEDULES ABOVE REFERRED TO.

SCHEDULE I.

Description of leasehold premises. [See *supra*, Clause 1.]

SCHEDULE II.

[*Specification of chattels and effects referring to an inventory.*]

PRECEDENT VI.

Prec. VI. *AGREEMENT for SALE to COMPANY of PATENTED INVENTIONS and CONTRACT. Consideration: Cash and Shares. Vendor to give full information as to mode of Working. Contract to be void if 500 Shares not taken within specified period.*

Parties. AN AGREEMENT made the — day of —, between A., of &c., (hereinafter called the vendor), of the one part, and the B. Company Limited (hereinafter called the company), of the other part: **Recitals.** WHEREAS the vendor is the inventor of certain inventions in connection with the manufacture and construction of —, for which he has obtained Her Majesty's letters patent, and of which he has duly filed specifications: AND WHEREAS the said inventions and letters patent are more particularly described and specified in the schedule hereto: AND WHEREAS by an agreement (hereinafter called the N. contract) dated the — day of —, and made between the vendor of the one part, and —, of the other part, the vendor, for the considerations therein specified, contracted to execute and do the works and things therein specified: AND WHEREAS the whole of the works and things agreed to be executed and done by the vendor under the said N. contract have been fully and effectually executed and completed according to the terms and conditions of such contract up to the day of the date hereof as the vendor hereby declares: AND WHEREAS the vendor has not up to the day of the date hereof received any part of the moneys payable to him under the said contract as he hereby declares: AND WHEREAS the nominal capital of the company is 60,000L, divided into 6,000 shares of 10L each, whereof 3,000 are to be called "A. shares" and 3,000 are to be called "B. shares": AND WHEREAS the holders of the B. shares are to be entitled to one-third part of the profits of the company: AND WHEREAS fifty of the A. shares and no more have been allotted and issued:

Agreement to sell.

NOW IT IS HEREBY AGREED as follows:—

1. The vendor shall sell and the company shall purchase; first, all those the said several inventions and the said letters

patent for the same respectively, together with the full benefit of all extensions and prolongations (a) of the terms by the said letters patent respectively granted, and also all improvements (b) on the said inventions which have been already or may hereafter be discovered by the vendor, and all other inventions which have been already or may hereafter be discovered by the vendor in connection with the manufacture and construction of —, or which can be used for any purpose for which the said inventions specified in the schedule hereto respectively can be used; and, secondly, the N. contract and all monies now payable or hereafter to become payable to the vendor, under the same contract, and the full benefit thereof, together with all rights, powers, authorities, privileges, and emoluments to the said premises respectively appertaining, and all the right, title, interest, and demand of the vendor in to and upon the said premises.

Prec. VI.

(a) As to extensions and prolongations, see "Agnew on Patents," 175, *et seq.*

(b) As to the validity of this, see *Printing, &c., Co. v. Sampson*, 19 Eq. 462; 23 W. R. 463.

2. The vendor shall at the request and costs of the company do all such acts and things as may, from time to time, be considered necessary or expedient by the company for procuring the confirmation of the said letters patent (c) and keeping the said letters patent on foot, and for obtaining, if possible, extensions and prolongations of the terms thereby granted, and shall from time to time communicate to the company all such improvements and other inventions as aforesaid, and, at the request and costs of the company, apply for and obtain letters patent in respect of such improvements or other inventions as aforesaid, or any of them, and shall execute and do all such assurances and things for vesting any letters patent so obtained in the company, and for keeping the same on foot.

Vendor to do all acts for keeping patent on foot, &c., and to communicate improvements.

(c) As to procuring confirmation of letters patent, where there has been a previous publication unknown to the patentee, see 5 & 6 Will. IV., c. 83, s. 2, and the following cases: *Stead's Patent*, 2 Webs. P. R. 146; *Card's Patent*, 6 Moo. P. C. C. 213; *Honiball's Patent*, 9 Moo. P. C. C. 378; *Lamenaude's Patent*, 2 Webs. P. R. 171.

3. The company shall, in the event of any infringement of the said letters patent, or any of them, be at liberty to com-

Power for company to

Prec. VI.	mence, carry on, and prosecute in the name of the vendor, his
sue in case of infringement.	executors, or administrators, all such actions and proceedings on account thereof as the company may from time to time determine, the company, nevertheless, keeping the vendor, his heirs, executors, and administrators, and his and their estates and effects, indemnified against all costs, damages, expenses, and liabilities incident to or consequent on any such action or proceedings as aforesaid.
Consideration, cash, and paid-up shares.	4. As the consideration for the said sale, the company shall pay to the vendor, on the — day of — next, the sum of 2,000 <i>l.</i> in cash, and shall, on or before that day, allot to him or to his nominees the said 2,000 B shares, which shall be deemed for all purposes to be fully paid-up shares, and shall be numbered, &c. [<i>supra</i> , p. 37].
No allotment of A shares till 500 applied for.	5. No further allotment of A shares, beyond the said 50 shares, shall be made unless and until 500 at least of such shares beyond the said 50 shall have been applied for.
Completion.	6. The purchase shall be completed on the — day of — next, at the office of Messrs. —, the vendor's solicitors, when the vendor shall, at the expense of the company, execute proper assignments to the company of the said letters patent and of the N. contract : Such assignments to be prepared by the company. The assignment of the said letters patent shall contain a covenant by the vendor that the said letters patent are valid and in no wise void or voidable, (<i>d</i>) and also such other covenants and provisions as may be considered necessary by the counsel of the company for giving to the company or its assigns the full benefit of the said sale and of the stipulations contained in Clauses 2 and 3 hereof.
Form of assignment of letters patent.	(<i>d</i>) There is no implied warranty, upon an agreement for the sale of a patent or of a licence to use it, that the patent is valid, and it is no answer to an action by vendor that the invention is not new, and that the plaintiff is not the true and first owner. See <i>Hall v. Conder</i> , 2 C. B. (N. S.) 22 ; <i>Smith v. Neale</i> , <i>ibid.</i> , p. 67 : <i>Trotman v. Wood</i> , 16 C. B. (N. S.) 479.
Covenants upon assignment of N. contract.	7. Upon the assignment of the N. contract the vendor shall covenant with the company to pay and discharge all payments and outgoings in relation to the same contract up to the — day of — last, and to indemnify the company against all responsibilities and obligations in respect thereof up to that day, And the company shall covenant with the vendor to perform, execute, and do the obligations, works, and things

specified in the N. contract so far as the same remain to be performed, executed, and done by the vendor under such contract from the said — day of — last, and to indemnify the vendor against the same.

Proc. VI.

8. The vendor shall at all times hereafter, and without making any charge therefor, give all such advice, explanation, and instructions to the directors and other officers and workmen of the company as may be necessary to enable them effectually to exercise and work the inventions to which the company may for the time being be entitled by virtue of this agreement, and shall, for such purposes, at his own cost and expense, from time to time prepare and furnish to the company all necessary plans, drawings, and models.

Vendor to explain mode of using inventions.

9. The vendor shall not, for a period of ten years from the date hereof, either solely, &c.

[*Supra*, p. 24, clause 9, *mutatis mutandis*.]

10. If, before the — day of — next, 500 at least of the said A shares shall not have been applied for, this agreement shall on that day become void, and neither party shall have any claim against the other for damages, costs, or expenses in relation thereto.

Vendor not to carry on similar pursuit for ten years.

Agreement to be void in certain event.

11. If any [*supra*, p. 31, clause 18].

Arbitration.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*This will contain particulars of the letters patent.*]

PRECEDENT VII.

PREC. VII. AGREEMENT to GRANT to INTENDED COMPANY LICENCE to USE PATENTS. *Consideration, Shares and Royalty. Special Clauses to be inserted in Licence.*

Parties. AN AGREEMENT made the — day of —, between A., of —, of the one part, and B., of —, on behalf of a company about to be incorporated under the Companies Acts, 1862 and 1867, by the name of The — Company, Limited (hereinafter referred to as the company), of the other part.

Recitals. WHEREAS the memorandum and articles of association of the company have been already prepared, with the privity and approval of the parties hereto : AND WHEREAS the objects of the company include the purchase of the — works, situate at —, in the county of —, and known as The — Works, and the acquisition of such licence as is hereinafter agreed to be granted : AND WHEREAS the owners of the said — works have entered into a conditional agreement with the said B. for the sale of the said — works to the company when formed : AND WHEREAS the nominal capital of the company is to be 200,000*L.*, divided into 5,000 shares of 40*L.* each : AND WHEREAS the said A. has duly obtained Her Majesty's letters patent for his several inventions, the particulars whereof are specified in the schedule hereto : AND WHEREAS proper and complete specifications of the said inventions were duly filed by the said A. : AND WHEREAS the said inventions were at the respective times of granting the said letters patent respectively new to the public use and exercise thereof within the United Kingdom, and the said letters patent respectively are now valid and in full force :

NOW IT IS HEREBY AGREED as follows :

Condition. 1. This agreement shall be conditional on the purchase by the company, before the — day of — next, of the said — works.

Agreement to grant licence. 2. Subject to the foregoing condition, the said A. shall grant to the company, and the company shall accept a licence

and authority, at the said — works, and at such other works situate within the counties of — and —, or either of them, as the company may hereafter acquire or rent, to use and exercise the said several inventions comprised in the said letters patent respectively so far as the said inventions, or any of them, are or is applicable to the manufacture of —, but not for any other purpose whatsoever. **Præc. VII.**

3. The said licence shall continue during all the residue now unexpired of the terms of years granted by the said letters patent respectively, and during all prolongations and extensions of any of the same terms. **Term of licence:**

4. As a premium for the grant of the said licence the company shall, on or before the — day of — next, allot to, or to the nominees (a) of the said A., ten thousand of its shares, which shares shall be deemed for all purposes to be fully paid up and shall be numbered in the books of the company — to — inclusive (b). **Premium in shares.**

(a) See *supra*, p. 11.

(b) See *supra*, p. 10.

5. The company shall, subject to the provisions hereinafter contained, pay to the said A. in respect of every ton of — manufactured by it during the continuance of the said licence, and in the manufacture of which the said inventions, or any of them, shall be employed, the royalty of — shillings, such royalty to be payable at the times hereinafter mentioned. **Rent and royalty.**

6. The said licence shall be by deed, and shall contain covenants by the company to keep, or cause to be kept, full, true, and just accounts of all — manufactured by it, and in the manufacture of which the said inventions or any of them shall have been employed, and within fourteen days after each of the usual quarter days in each year during the continuance of the said licence to render the said A. a full and complete statement in writing of all — manufactured by the company, and in the manufacture of which the said inventions, or any of them, shall have been used during the quarter ending on such quarter day; and (if required by the said A.) to procure such statement to be verified by the statutory declaration of the manager or secretary of the company: And within twenty-one days after each of the said quarter days to pay, or cause to be **Covenants by Company to be contained in licence.**

Prec. VII. paid, to the said A., the full amount of the royalty for such quarter: And to permit the said A., his executors, administrators, or assigns, or his or their agents, duly authorised in that behalf, at all times during the continuance of the said licence, in the day time, at his or their discretion, to enter upon the works of the company, and to see, examine, and watch the operations and processes there carried on and used: And that if the company shall, during the continuance of the said licence, make or discover any improvements or additions to the said inventions, the company shall not obtain or apply for, and will not knowingly permit or suffer any person in its employment to obtain or apply for the grant of any letters patent for the exclusive use of such improvements or additions without the previous consent in writing of the said A.:

Proviso.

And a proviso that in case the said letters patent, or any of them, shall be openly and continuously infringed, and the said A., his executors, administrators, or assigns, shall not, within a reasonable time after such infringement shall have come to his or their knowledge, take proceedings to prevent and stay the same, and duly prosecute the proceedings so taken; or, in case the said letters patent shall fail or become void by reason of the non-payment of any monies thereby required to be paid in order to keep the same on foot; or, in case the said letters patent shall be declared or found void or invalid by any Court of competent jurisdiction; or, in case the majority of the persons for the time being holding licences to use the said inventions, or any of them, shall wilfully neglect or refuse to pay the royalties which for the time being shall be payable by such persons as last aforesaid respectively, such neglect or refusal not being the result of any combination or connected action on the part of such licensees; then, and in every or any of the cases aforesaid, and so long as the same shall continue, the said royalty shall cease to be payable:

Proviso.

And a proviso that if the said A. shall, by any licence granted after the date of the licence to be granted in pursuance of this agreement, permit any person, or persons, or company (other than the company), to use and exercise the said inventions, or any of them, at any royalty less than the royalty to be paid by the company as aforesaid, then and in such case the royalty subsequently payable by the company shall (so long as such

licence or licences shall continue), be reduced to the rate of the lowest royalty for the time being payable under any such licence as last aforesaid.

7. The said licence shall also contain covenants by the said A., that the said letters patent are valid and in full force, and in nowise void or voidable ; that he has good right to grant the said licence ; and for quiet enjoyment qualified in the usual manner ; and to permit the company in case of any infringement of the said letters patent, or any of them, to bring any action in respect thereof, in the name of the said A., nevertheless keeping him indemnified from all costs and damages on account thereof ; And at all times during the continuance of the licence agreed to be hereby granted (if he shall so long live), to furnish the company with all such information with reference to the mode of using the said inventions as may in the opinion of the company be necessary to enable the company to obtain the full benefit of the said licence ; and also during the continuance of the said licence, at the request and expense of the company to communicate to it all improvements in or additions to the said inventions which he may make or discover, and to permit and suffer the company to enjoy the use thereof without any additional royalty, but so far only as the same may be applicable to the manufacture of — ; and within fourteen days next after he shall have granted, or agreed to grant, any licence for the use by any other company, or person, or persons, of the said inventions, or any of them, in the counties of —, —, —, and —, or any of such counties, to communicate to the company the date, nature, terms, and effect, of every such licence or agreement ; and also within the like period to communicate to the company the like particulars of any licence or agreement which he shall grant, or agree to grant, for the use of the said inventions, or any of them by any other company, or any person or persons, in any other part of the United Kingdom, the Channel Islands, and the Isle of Man, at a less royalty than that payable by the company ; And that he will not at any time hereafter during the continuance of the said licence either solely [*supra*, p. 24] ; And for further assurance.

8. Upon proof being given to the said A. that the company has purchased the said — works, the said A. shall execute a proper deed of licence to the effect hereinbefore provided ; such

Prec. VII.

Covenants by
A. to be con-
tained in
licence.

Execution
of licence.

Prec VII. deed shall be prepared by the company and shall be left at the office of Messrs. —, the solicitors of the said A., at least seven days before the said A. shall be required to execute the same.

Counterpart
of licence.

9. The company shall execute a counterpart of the said deed of licence, and shall deliver the same to the said A.

Expenses of
deeds.

10. The expenses of and incident to the preparation and execution of the said deed of licence and counterpart shall be borne by the company.

11. Upon, &c. [*supra*, p. 25].

12. If, &c. [*supra*, p. 25].

Arbitration.

13. If any, &c. [*supra*, p. 47, clause 23, *mutatis mutandis*].

Contingent
avoidance of
agreement.

14. If the company shall not be incorporated and purchase the said — works before the — day of — next, this agreement shall thereupon become void.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*Particulars of letters patent.*]

PRECEDENT VIII.

Prec. VIII. AGREEMENT *by* COMPANY ADOPTING CONTRACT MADE, ON ITS BEHALF, BEFORE ITS INCORPORATION. *For indorsement on original contract.*

Parties.

AN AGREEMENT made this — day of —, between A., of &c., of the first part, B., of, &c., of the second part, and The — Company, Limited (hereinafter called the company), of the third part. WHEREAS, since the execution of the within written agreement, the company has been incorporated in accordance with the intention in that behalf referred to in such agreement :

Recitals.

NOW IT IS HEREBY MUTUALLY AGREED as follows :—

Ratification

1. The within written agreement shall be, and the same is

hereby ratified and adopted by the company, and shall be binding on the company in the same manner as if the company had been incorporated prior to the date thereof, and had duly authorised the said B. to enter into the same on its behalf.

Prec.VIII.

of within-written agreement.

2. The said B. shall henceforth be discharged from all liability under or in respect of the said agreement (a).

Discharge of B. from liability.

IN WITNESS, &c.

(a) As to the above agreement, see *supra*, p. 2.

PRECEDENT IX.

AN AGREEMENT by COMPANY ADOPTING, *with* MODIFICATIONS, Prec. IX.
CONTRACT *made on its behalf before its* INCORPORATION.

AN AGREEMENT, made the — day of —, between The — Company, Limited (hereinafter called the company) of the first part, A., of, &c., of the second part, and B., of, &c., of the third part. WHEREAS, by an agreement dated, &c., and made between the said B., of the one part, and the said A., for and on behalf of the company, which was then intended, and has since been formed under the Companies Acts, 1862 and 1867, of the other part, it was agreed that the said A. should sell, and the company purchase certain real and personal property upon the terms and subject to the stipulations and conditions therein contained :

Parties.

Recitals.

NOW THESE PRESENTS WITNESS, AND IT IS HEREBY AGREED as follows :—

1. The said agreement shall, subject to the modifications thereof hereinafter contained, be binding on the company in the same manner, and be read and construed in all respects as if the company had been party thereto instead of the said A.

Adoption of an agreement with modifications therein.

2. Clause 5 of the said agreement shall be cancelled, and the following clause shall be substituted in lieu thereof, namely :—

Cancellation of a clause in adopted agreement and sub-

“ 5. The purchase-money shall be paid and satisfied in

Prec. IX.

stitution of a
new one.

manner following, that is to say, as to 5,000*l.*, part thereof, in cash ; and as to 50,000*l.*, further part thereof, by the allotment to the said A., or his nominees, of 5,000 shares in the company, of 10*l.* each, to be credited as fully paid up, and to be numbered in the books of the company with the numbers — to — inclusive, and as to 45,000*l.*, the residue thereof, by the issue to the said A., of 900 debentures of the company for 50*l.* apiece."

Form of de-
bentures.

8. The said debentures shall be in the form set forth in the schedule hereto.

Company to
pay prelimi-
nary expenses
in a certain
event.

4. If before the — day of — next 2,000 of the company's shares shall have been applied for and allotted, and the sums of 2*l.* and 3*l.* per share, which by the articles of association of the company are made payable thereon upon application and allotment respectively, shall have been duly paid, the company shall pay the costs of, and incident to the preparation and execution of its memorandum and articles of association, and of the hereinbefore recited agreement, and of these presents, and of all stamps, fees on registration, and legal and other costs, charges, and expenses whatsoever incurred by the said A., in or about or in relation to the formation of the company (hereinafter referred to as the preliminary expenses), and shall indemnify the said A., his heirs, executors, and administrators, and his and their estates, against all actions, proceedings, costs, claims, and demands in respect thereof.

Otherwise
vendor to pay
the prelimi-
nary expenses
and the costs
of issuing the
prospectus, &c.

5. But if before the said — day of — 2,000 at least of the company's shares shall not have been applied for and allotted, and such sums as aforesaid duly paid in respect thereof, then and in such case the said A. shall pay the preliminary expenses, and also the costs, charges, and expenses of preparing, printing, publishing, and circulating 20,000 copies of a prospectus of the company, and all legal and other costs, charges, and expenses incurred by the company in carrying on its business up to the said — day of — next, and shall indemnify the company against all actions, proceedings, costs, claims, and demands in respect thereof.

Discharge
of A. from
liability.

6. The said A. shall henceforth be discharged and freed from all liabilities and obligations whatsoever incurred by him under the said recited agreement in the same manner as if he had not been a party to that agreement.

7. If any [*supra*, p. 47].

PREC. IX.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*Containing form of debentures.*]

PRECEDENT X.

AGREEMENT to ISSUE PAID-UP SHARES in SATISFACTION of PREC. X.
DEBT DUE by COMPANY.

AN AGREEMENT, made the — day of —, between Parties.
The A. M. B. Company, Limited (hereinafter called the A. company), of the one part, and The C. D. and E. Company, Limited (hereinafter called the C. company), of the other part.
WHEREAS by an agreement, dated the — day of —, and Recitals.
made between the C. company, of the one part, and the A. company, of the other part (being the agreement No. 1 referred to in the introduction to the articles of association of the A. company), the A. company agreed to pay the C. company for the works and matters undertaken by the C. company in connection with making and constructing of a dock at — the sum of 225,000*l.*, whereof the sum of 75,000*l.* is payable by instalments in manner therein mentioned. AND WHEREAS an instalment of 10,000*l.*, part of the said last-mentioned sum, will become payable to the C. company on the — day of — next :

NOW IT IS HEREBY AGREED as follows :—

1. The A. company shall, on or before the — day of — next, allot to the C. company or its nominees 1000 shares of 10*l.* each in the A. company, which shares shall be deemed, for all purposes, to be fully paid up, and shall be numbered, in the books of the A. company, with the numbers — to — inclusive (a).
The A company to allot 1000 shares ; to be deemed fully paid up ;

(a) See *supra*, p. 11.

As to the power of one corporation to become a member of another, see *Ex parte Contract Corp.*, 3 Ch. 105 ; *International Contract Company's Case*, W. N. 1869, 24.

Prec. X.
and to be ac-
cepted by the
C company
instead of
cash.

2. The C. company shall accept the said shares in full satisfaction and discharge of the said instalment of 10,000*l.*, and of all claims and demands in respect thereof (*b*).

IN WITNESS, &c.

(*b*) As this instalment is not presently payable, this agreement requires to be filed under Section 25 of the Act of 1867. If the instalment were presently payable, the transaction would amount to a payment for the shares in cash, and in that case it would not be necessary to file the agreement, see *supra*, p. 12. But even then it would be *expedient* to file it for the benefit of transferees, who would thereby secure the preservation of evidence that the shares were in fact paid up in cash, see *supra*, p. 12.

PRECEDENT XI.

Prec. XI. AGREEMENT *by* DEBENTURE-HOLDERS *to* ACCEPT PAID-UP SHARES *in* SATISFACTION *of* PRINCIPAL MONIES *and* INTEREST DUE *on* DEBENTURES.

Parties.

Recitals.

AN AGREEMENT made the — day of — between the persons whose names and descriptions are severally set forth in the first column of the schedule hereto of the first part, and The B. Company, Limited (hereinafter called the company), of the second part. WHEREAS the said persons parties hereto of the first part are the holders of the several debentures of the company for 20*l.* apiece, the distinguishing numbers whereof are set opposite the names of such persons respectively in the second column of the said schedule; AND WHEREAS there is due to such persons respectively for principal and interest up to the date hereof on their said debentures the several aggregate amounts set opposite the names of such persons respectively in the third column of the said schedule; AND WHEREAS by a special resolution of the company, passed and confirmed at general meetings thereof, held respectively on the — day of —, and the — day of —, it was resolved that the capital of the company should be increased to 120,000*l.* by the creation of 20,000 new shares of 1*l.* each, to be called preference shares, and to be entitled to the following rights and privileges, namely, &c.

Now IT IS AGREED as follows:—

Debenture
holders to
make certain

1. The said several persons parties hereto of the first part shall immediately after the execution hereof by them respec-

Prec. XI.

(b) In the above case it is assumed that the debentures have not arrived at maturity, hence the agreement requires to be filed pursuant to Section 25 of the Act of 1867. See n. (b), *supra*, p. 60, and *supra*, p. 62, *et seq.*

PRECEDENT XII.**Prec. XII. AGREEMENT by DEBENTURE HOLDER to ACCEPT PAYMENT IN PREFERENCE SHARES.**

AN AGREEMENT between A., of, &c., on behalf of The — Company, Limited (hereinafter called the company), of the one part, and B., of, &c. (hereinafter called the debenture-holder), of the other part. WHEREAS the debenture-holder is entitled to the debentures of the company specified in the first column of the schedule hereto; AND WHEREAS there is now due to the debenture-holders for principal monies and interest upon the said debentures the sum specified in the second column of the said schedule; AND WHEREAS the capital of the company consists in part of 5000 first preference shares of 10*l.* each, which shares are entitled to a preference, both as regards dividends and in the distribution of surplus assets.

NOW IT IS HEREBY AGREED as follows:—

Company to
allot paid-up
shares.

1. The company shall allot and issue to the debenture-holder the number of the said first preference shares specified in the third column of the said schedule.

How shares to
be numbered.

2. The shares so allotted shall be numbered with the numbers specified in the fourth column of the said schedule, and shall be deemed for all purposes to be fully paid up.

Shares to be
accepted in
part payment
of debt.

3. The debenture-holder shall accept the said shares in full payment and satisfaction of so much of the sum specified in the second column of the said schedule as is specified in the fifth column of the same schedule.

Company to
file agreement.

4. The company, &c. [*Ut supra*, p. 61.]

AS WITNESS the hands of the said parties, &c. (a).

(a) See *supra*, p. 17.

THE SCHEDULE ABOVE REFERRED TO (b).

PREC. XII.

Number of debentures of £20 each.	Amount due for principal and interest.	Number of shares to be allotted.	Denoting numbers of shares, both inclusive.		Amount satisfied.
			From	To	
28	£ s. d. 607 10 5	60	207	266	£ s. d. 600 0 0

(b) See *supra*, p. 62, n. (h).

Sometimes it is deemed more convenient to have a separate agreement for each debenture-holder, instead of one for a number, as in Precedent XI. Such agreements are generally printed if a number have to be executed.

PRECEDENT XIII.

AGREEMENT *by* DEBENTURE-HOLDER *to* ACCEPT PAYMENT *in*
PERPETUAL MORTGAGE DEBENTURE STOCK.

PREC. XIII.

AN AGREEMENT made the — day of — between B., of, &c., of the one part, and The — Company, Limited (hereinafter called the company), of the other part : WHEREAS the said B. is entitled to [13] mortgage debentures of the company for £100 each, the distinguishing numbers whereof are specified in the first column of the schedule hereto : AND WHEREAS there is now due to the said B., for principal monies and interest upon the said debentures, the sum specified in the second column of the said schedule : AND WHEREAS the directors of the company, in exercise of the powers vested in them by the articles of association thereof, have created a perpetual mortgage debenture stock of the nominal amount of 100,000£, which stock, by virtue of an indenture dated, &c., and made between the company of the one part, and H., L., and P., of the other part, constitutes, subject to the provisions of the said indenture, a first charge upon the property of the company, both present and future, and is to be issued upon certain conditions, a copy whereof is set forth in the schedule to the same indenture : AND WHEREAS the company cannot conveniently pay to the said B. the amount now due to him as aforesaid : NOW THEREFORE IT IS HEREBY AGREED as follows :—

Parties.

Recitals.

Prec. XIII.

Debentures to be exchanged for stock.

Stock to be accepted in full satisfaction.

1. The said B. shall forthwith give up to the company to be cancelled the said debentures with all coupons for future interest belonging thereto, and the company shall thereupon issue to him so much of the said stock as is specified in the third column of the said schedule.

2. The stock so issued shall be accepted by the said B. in full satisfaction of the said principal monies and interest due to him as aforesaid, and of all claims and demands upon the company in respect of the said debentures.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Distinguishing numbers of debentures, both inclusive.		Principal and interest due on the debentures.			Amount of stock to be issued.		
From	To						
27	39	£	s.	d.	£	s.	d.
		1560	10	0	1716	11	0

In the above case the debenture holder gets stock to an amount exceeding by 10 per cent. the principal monies and interest due to him. This bonus is given as an inducement to him to capitalise the arrears of interest and to accept perpetual stock. Instead of making the stock perpetual, it might (of course) be made redeemable at a fixed period, or the company may reserve power to redeem at any time on (say) six months' notice. See further, *infra*, p. 465.

PRECEDENT XIV.**AGREEMENT for the ISSUE of SHARES at a DISCOUNT.****Prec. XIV.**

Parties.

AN AGREEMENT, made the — day of —, between The — Company, Limited (hereinafter called the company), of the one part, and the several persons whose names are set forth in the first column of the schedule hereto of the other part, whereby it is agreed as follows :

Agreement to issue shares at a discount.

1. Each of the parties hereto of the latter part shall, on or before the — day of — next, pay to the company the sum of money set opposite his name in the fourth column of the said schedule ; and in consideration thereof, the company shall

allot to him the number of shares set opposite his name in the fifth column of the said schedule, which shares shall be distinguished by the numbers set opposite his name in the sixth column of the said schedule, and shall be deemed for all purposes to have been paid up to the extent of £—— per share. **Prec. XIV.**

2. The company, before any such allotment of shares as aforesaid is made, shall procure this agreement to be duly filed with the Registrar of Joint Stock Companies. **Filing of agreement.**

As to whether this agreement is legal, see *infra*, note. If it is, it must, at any rate, be filed pursuant to Section 25 of the Act of 1867.

AS WITNESS the common seal of the company and the hands of the said parties hereto of the latter part, the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

Names.	Descriptions.	Addresses.	Amount to be paid.	Numbers of shares.	Distinguishing numbers of shares.

ISSUE OF SHARES AT A DISCOUNT.

Whether shares in a company, formed under the Companies Act, 1862, can be issued at a discount, has not been decided, and is, "to say the least, questionable," "Lindley," 635, 638. When property or services are to be paid for by a company in shares, the price will, of course, be fixed, with regard to the actual, not the nominal value of the shares; and thus a company may and often does indirectly issue shares at a discount, *e.g.*, a 10% share in consideration of 5% worth of property. There is no question that such a transaction is valid. If, then, the shares of a company happen to be depreciated, why should it not be at liberty, assuming that its regulations authorise the act, to sell them at their actual value for cash? The members could not complain, for *ex hypothesi* the regulations, which they can alter, authorise the sale; and it would not seem that the creditors are prejudiced more in this case than in the above, and moreover they have notice of the regulations. However, the point has yet to be decided. Of course, an agreement as to the issue of shares at a discount, must be filed in accordance with Section 25 of the Act of 1867, *supra*, p. 6.

Prec. XIV. If it is invalid, the filing will not better it ; but if it is valid, the filing is essential.

Articles of association very commonly give the executive express power to issue shares at a discount ; but until a decision as to its validity has been given, its exercise is not to be recommended.

A considerable number of companies have, however, issued shares at a discount.

BONUS SHARES.

Sometimes the value of a company's property having increased, it is considered desirable to create and distribute, *gratis*, among its members, new shares, which are to be deemed fully paid up. Such shares are generally called "bonus shares."

Whether bonus shares can be validly issued by a company has not been decided. As between the members, there seems no reason why they should not, provided that the regulations authorise the issue, and that the shares are distributed *pro rata* among all the members ; but as between the company and its creditors, it may be questioned whether it is valid. And if, as appears from what is said above, doubt exists as to the validity of an issue of shares at a discount, *à fortiori* there must be doubt as to the validity of an issue *gratis* ; for when shares are issued at a discount, some consideration is given for them, since the taker either pays or becomes liable to pay part of the nominal value thereof in cash. Not so in the case of bonus shares.

Mr. Lathom Brown, in his "Treatise on the Act of 1862," p. 306, gives a clause for insertion in articles authorising an increase of capital, by the issue of paid-up bonus shares to the members ; and, in a note, observes : "By this clause members may obtain a fair interest in the increased value of their property without diminishing their working capital."

Whether it be legal or not, bonus shares are sometimes issued, and the operation is commonly known as "watering the capital." Thus it is a matter of notoriety that the Anglo-American Telegraph Company, Limited, has from time to time issued bonus shares to the amount of nearly a million and a half nominal value. The writer knows of other cases.

Sometimes it is provided that every person who takes a debenture of a company shall be entitled to have a fully paid-up share allotted to him by way of bonus. It would appear that an agreement to this effect is valid, provided that it is duly filed pursuant to Section 25 of the Act of 1867. Although the share is called a "bonus share," the allottee gives a valuable consideration, which puts the transaction on a different basis from that on which a *gratis* allotment stands. See *In re Malaga Lead Company, Firmston's Case*, 20 Eq. 524.

PRECEDENT XV.

AGREEMENT *for the APPOINTMENT of a MANAGER by a COM- Prec. XV.*
 PANY. *Remuneration, Salary, and Share of Profits.*
Compensation in case of Dismissal.

AN AGREEMENT made the — day of —, between Parties.
 The — Company, Limited (hereinafter called the company),
 of the one part, and A., of —, of the other part.

WHEREAS by the articles of association of the company, it Recital.
 is provided that the said A. shall be the first general manager
 of the company :

NOW IT IS HEREBY MUTUALLY AGREED as follows :—

1. The said A. shall be the first general manager of the Appointment
 company, and as such general manager shall perform the to office.
 duties and exercise the powers which from time to time may
 be assigned to or vested in him by the directors of the
 company.

2. The said A. shall hold the said office, subject as herein- Term.
 after provided, for the term of — years from the date
 hereof.

3. The said A., unless prevented by ill-health, shall, during A. to perform
 the said term, devote the whole of his time, attention, and duties.
 abilities to the business of the company, and shall obey the
 orders from time to time of the board of directors of the com-
 pany, and in all respects conform to and comply with the
 directions and regulations given and made by them, and shall
 well and faithfully serve the company and use his utmost
 endeavours to promote the interests thereof.

4. There shall be paid to the said A., as such general Salary.
 manager, a salary which shall be as follows, namely : The sum
 of 300*l.* for the first year, the sum of 400*l.* for the second
 year, and the sum of 500*l.* for each succeeding year.

5. The said salary shall commence from the date hereof, and When to be
 shall be paid quarterly on the — day of —, &c., the first paid.
 quarterly payment to be made on the — day of — next.

6. In addition to his aforesaid salary, the said A. shall,

Prec. XV.

Besides share
of profits as
per articles.

during his tenure of the office aforesaid, be entitled to the share in the profits of the company which, under the said articles of association thereof, is payable to the general manager for the time being of the company.

A. may resign.

7. The said A. shall be at liberty to resign the said office at any time upon giving to the company three calendar months' notice of his desire so to do.

Compensation
to A. in case
of winding-
up, &c.

8. If, before the expiration of — years from the date hereof, the company is wound up, or by any other means, except the death or resignation of the said A., his tenure of the said office shall be determined, the company shall pay to the said A. the sum of 2,000*l.* as liquidated damages for his loss of office.

IN WITNESS, &c. (a).

(a) See *infra*, p. 69, as to appointment of officers.

PRECEDENT XVI.

Prec. XVI. AGREEMENT for the APPOINTMENT of a SECRETARY by a COMPANY. *Leave of Absence. Power to Rescind.*

Parties.

THIS AGREEMENT, made the — day of —, between The — Company, Limited (hereinafter called the company), of the one part, and B., of —, of the other part.

Recitals.

WHEREAS the capital of the company is *l.*, divided into — shares of *l.* each : AND WHEREAS the directors of the company are, by the articles of association thereof, empowered to appoint a secretary of the company, either for a fixed term or otherwise as therein mentioned, and to fix and determine his remuneration, which may be by way of salary or otherwise, as in the said articles mentioned :

NOW IT IS HEREBY AGREED as follows :—

Appointment.

1. The said B. shall be secretary of the company for a term of — years, to be computed from the date hereof.

Salary.

2. There shall be paid by the company to the said B., as such secretary as aforesaid, a salary at the rate of *l.* per annum. Such salary shall commence from the date hereof,

and shall be payable quarterly on every — day of —, Prec. XVI.
 — day of —, — day of —, and — day of —; the first of such quarterly payments to be made on the — day of — next.

3. The said B. shall, unless prevented [*supra*, p. 67].

4. The said B. shall, during his tenure of the said office, be entitled to leave of absence for a period in each year not exceeding — weeks, and, unless otherwise arranged between the board of directors of the company and the said B., such leave of absence shall be granted in each year as follows, namely, from the — day of — to the — day of —, &c., &c. The aforesaid salary of the said B. shall continue notwithstanding such leave of absence.

B. entitled to leave of absence.

5. In consideration of the premises, the company shall forthwith allot and issue to the said B. ten of its shares, which shall be numbered in the books of the company — to — both inclusive, and shall be deemed for all purposes fully paid up.

Shares to be allotted to B.

6. Either of the parties hereto may determine the agreement by giving to the other not less than — calendar months' notice in writing, and upon the expiration of the period specified in such notice, the said B. shall cease to be secretary of the Company (a).

Power to rescind.

IN WITNESS, &c.

(a) As to stamps, see *supra*, p. 17.

The Stamp Act, 1870, imposed duties on appointments to offices. See "Tilaley," pp. 8, 474. These duties were repealed by 38 Vict. c. 23, s. 14.

APPOINTMENT OF OFFICERS AND AGENTS.

The articles of a company often purport to make appointments of managers, secretaries, agents, solicitors, and others; but it is generally expedient, after the incorporation, for persons so appointed to enter into an agreement in writing with the company, defining the terms and conditions of the appointment. Unless this precaution is taken, it may turn out, if any dispute subsequently arises, that there is no evidence of appointment, and that the officer cannot recover damages for breach of the agreement. It has been settled that at any rate a person not a party to the articles cannot rely on a stipulation contained therein as an agreement by the company with him. *Elvy v. Positive Government, &c., Co.*, 1 Ex. Div. 88. As to what is evidence of an appointment of an officer by the company, see *Browning v. Great Central Mining Co.*, 5 H. & N. 856; 29 L. J. Ex. 399.

As to appointment of officers by articles of association.

An agreement should be executed.

Moreover, if the agreement is not to be performed within a year, it is

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Remedy of
officer or other
agent for
dismissal.

No specific
performance
of contract for
future ser-
vices.

Resolution
or order to
wind up =
dismissal.

As to proof in
winding-up.

*Yelland's
Case.*

Agent cannot
prove for
future com-
mission.

*Rhodes v. For-
wood, H. L.*

necessary to have an agreement in writing, by reason of Section 4 of the Statute of Frauds. *Eley v. Positive Government, &c., Co.*, 1 Ex. Div. 20; S. C. 88; and also Smith L. C. 7th ed. 335.

If an agent is appointed for a term, and is dismissed before the expiration thereof, he is entitled forthwith to sue the company (1) for damages for breach of the agreement; or (2) he may treat the contract as rescinded, and sue on a quantum meruit for the work actually performed by him. See the notes to *Cutter v. Powell*, Smith L. Cas. 7th ed., Vol. II., p. 1, *et seq.*

Specific performance of a contract for hiring and service will not be decreed. *Stoker v. Brocklebank, &c., Co.*, 3 M. & G. 250; *Brett v. East India, &c., Co.*, 2 H. & M. 404; W. R. 596; *Mair v. Himalaya Tea Co.*, 1 Eq. 411.

And the fact that the agent is a member of the company, and that the regulations provide for his employment, would not enable him to procure the aid of the Court to prevent his dismissal from or secure his restoration to office. The rule in *Foss v. Harbottle* would prevent any such intervention.

A resolution or order for winding up is equivalent to a dismissal of a company's servants. *Chapman's Case*, 1 Eq. 346; *Shirreff's Case*, 14 Eq. 417.

And if an agent or servant has been appointed for a term at a salary, he will be entitled to prove in the winding up for the value of his salary for the unexpired residue of the term.

Thus, in *Yelland's Case*, 4 Eq. 350, Yelland had been engaged for a term of five years, from 1 July, 1865, as manager, at Bideford, of a branch of the English Joint Stock Bank, at a salary of 500*l.* per annum, with the right to occupy the bank premises as a dwelling-house, free of rent and taxes, and to act as agent for any Insurance company. An order was made to wind up the bank in May, 1866, and Yelland claimed to prove as a creditor. Page-Wood, V.-C., said: "I think that the proper course will be to ascertain the present value of an annuity of 500*l.*, terminating on the first of July, 1870, and a proper rent for the bank premises for the rest of the term, regard being had to the risk to health and life. From this amount something will have to be deducted for Mr. Yelland being at liberty to obtain a fresh appointment; and regard must also be had to the liberty reserved to him by the agreement of acting as agent for other companies. The matter will go back to Chambers for calculation upon this principle." This case was followed in *Ex parte Clark*, 7 Eq. 550. But when, in addition to his salary, an agent is to have a commission on business done, he is not, upon a winding up, entitled to prove for what he might have otherwise earned. *Ex parte Maclure*, 5 Ch. 736. This was a case of a voluntary winding up, and the same rule must *a fortiori* apply in a compulsory winding up.

In a recent case before the House of Lords, it appeared that an agreement had been made between A. and B., that B. should be sole agent at Liverpool for the sale of A.'s coal during a term of years, at a certain commission; A. to have the control of the prices, with power for him to rescind if B. did not sell a certain minimum, and power for B. to rescind if A. could not supply a certain minimum. A. sold his colliery before the expiration of the term, and it was held that an action by B. against A. for damages for breach of the agreement occasioned thereby would not lie, for that the agreement did not bind A. to keep his colliery, or to send any coal to Liverpool. *Rhodes v. Forwood*, 1 Ap. Cas. 257.

It follows from this case that if a company made such an agreement, and then passed into liquidation, the agent could not prove for damages.

Prec. XVI.

Compare the above case with *Gilbert's Case*, 26 L. T. 467, where an agent was allowed to prove for commission, which, but for a voluntary winding up, he might have earned.

It is very common, expressly to fix by agreement, the compensation to be payable to the agent in case his agency shall be terminated by the company. Thus, in *Logan's Case*, 9 Eq. 149; 14 W. R. 273; Logan was by the articles appointed managing director of a company, at 800*l.* per annum, and a commission on profits. It was also provided that: "In the event of the said L. being at any time deprived of or removed from his office for any other cause than gross misconduct, the directors shall pay to him as compensation for loss of office a sum equal to three years' salary" The company was ordered to be wound up, and Logan claimed to prove for three years' salary. Romilly, M.R., said: "I think Mr. Logan is entitled to prove against the company for the amount claimed by him. It is part of the contract between Logan and the company that if Logan is deprived of his office the company are to pay him a sum equal to three years' salary, provided the removal from office is not occasioned by gross misconduct. That is a contract to be construed most strictly against the company; and I think that Mr. Logan is entitled to his claim, without any deduction being made, as in *Yelland's Case* (*supra*, p. 70); for, suppose that while the company was a going concern, they had wished to remove him, because they wished to have a better man as manager, they would have had to pay him three years' salary, and he might have engaged himself to another company the very next day." See also *Shirreff's Case*, 14 Eq. 417; 20 W. R. 966.

Agreement to specific sum for loss of office.

Logan's Case.

It will be observed that the claim in *Logan's Case* was rested on the clause in the articles. Query whether this would now be considered a contract binding on the company, *Eley v. Positive, &c., Co.*, 1 Ex. Div. 88. An express contract ought to be made after the incorporation of the company.

But where an order had been made to wind up a company of which T. was an officer, one of the terms of his engagement being, that, "5,000*l.* be paid to him if the company discontinue to employ him," it was held by Lord Cairns, that, "T. was not entitled to prove for the 5,000*l.*, as there was no voluntary, active, and intelligent discontinuance by the company of the employment of T." *Re Albert Life Ass. Co., Tail's Claim*, 16 Sol. J. 46.

MEMORANDA OF ASSOCIATION.

INTRODUCTORY NOTES.

ANY seven or more persons, associated together for any lawful purpose, may, by subscribing their names to a document called a memorandum of association, and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated company, with or without limited liability. Section 6 of the Act.

Mode of forming company.

If limited liability is desired, the company must be either limited by shares or by guarantee. Section 7 of the Act.

The memorandum of a company limited by shares must [Section 8 of the Act] contain the following things:—

Memorandum of company limited by shares.

1. The name of the proposed company, with the word "Limited" as the last word in such name.
2. The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is proposed to be situate.

3. The objects for which the proposed company is to be established.

4. A declaration that the liability of the members is limited.
5. The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:—

- (1.) That no subscriber shall take less than one share:
- (2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes. For form of such a memorandum, see *infra*, p. 96.

The memorandum of a company limited by guarantee must [Section 9 of the Act] contain the following things:—

1. The name of the proposed company, with the addition of the word limited as the last word to such name.
2. The part of the United Kingdom, whether England, Ireland, or Scotland, in which the registered office of the company is proposed to be situate.

Memorandum of company limited by guarantee.

3. The objects for which the proposed company is to be formed.

4. A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount. For a form of such a memorandum, see *infra*, pp. 98 and 99.

If the company has a capital divided into shares, each subscriber must take one share at least, and is to write opposite his name on the memorandum of association the number of shares he takes. [Section 14 of the Act.] As to this, see further, *infra*, p. 89.

The memorandum of an unlimited company must [Section 10 of the Act,] contain the following things:—

Memorandum
of unlimited
company.

1. The name of the proposed company.
 2. (*Office*)
 3. (*Objects*)
- } *Same as in a limited company.*

Registration
of memo-
randum.
Section 17.

By Section 17 of the Act it is provided that: "The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Joint-Stock Companies hereinafter mentioned, who shall retain and register the same: there shall be paid to the registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B. in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C. in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct."

Certificate of
incorporation.
Effect.

Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by the Act, or by the desire of the parties to be registered, the registrar is to certify under his hand that the company is incorporated, and in the case of a

limited company that the company is limited: and the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name in the memorandum of association; capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as provided by the Act. Section 18 of the Act.

Section 11 of the Act is as follows:—"The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland; it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of the Act."

Stamp, signature, and effect of memorandum.

With regard to the several clauses contained in the memorandum of association:

As to the name:—

This clause is required in every memorandum. The choice of the name rests with the subscribers of the memorandum. They are, subject to Section 20 of the Act, free to select any name they like, so, nevertheless, that the word limited shall, in case of a company limited by shares or by guarantee, form the last word of the name. [See, however, *infra*, p. 78.]

Name of company.

Section 20 provides that:—No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is regis-

Section 20.

tered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceeding instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name, that might have been continued or commenced against the company by its former name.

Improper use
of name.

The registration of a company by a name which is calculated to deceive, by reason of its identity with or resemblance to the name used by some unregistered company, partnership, or person, will not prevent the Courts from intervening, in a proper case, by injunction, to protect the rights of such last-mentioned company, partnership, or person. As to the principles on which the Court interferes, see the notes to *Croft v. Day*; "Tudor's L. C. Merc. Law," 563; "Kerr on Injunctions," 474.

Names de-
scriptive of
locality.

In *The London and Provincial Law Assurance Society v. The London and Provincial Joint-Stock Life Assurance Company*, 17 L. J. Ch. 37, the Court refused to interfere by injunction. The absence of the word "Law" in the defendant's name materially influenced the decision.

"Colonial."

So too in the case of *The Colonial Life Assurance Company v. The Home and Colonial Assurance Company, Limited*, 33 Beav. 548; 33 L. J. Ch. 741, an injunction was refused. The Master of the Rolls there said: "The object of this application is really to obtain a monopoly of the use of the word colonial. If a company cannot call itself 'Colonial,' it cannot call itself 'London and Colonial,' or 'Liverpool and Colonial.' It is the exclusive use of the word colonial which the plaintiffs desire to have.

Cases in which
Court will
interfere.

"There are three classes of cases which ought to be distinguished: one is that of trade marks, where a firm has for a considerable time carried on their trade, using a distinct mark on their goods. In that case if, without any intention to defraud, another person uses that trade mark, this Court

will interfere to restrain him. That is not the present case. Another class of cases is where a man sets up business and uses the name of another person.

"Again, the name may become the name of a firm by succession, and this Court would interfere to prevent a person using that name, although there might be no existing member of the firm of that name. Such is the case of Messrs. Child & Co. There is a similar class of cases which have been termed symbolical cases, such as the 'Atlas' or the 'Globe' Assurance Company. This is something in the nature of a trade mark.

"But if a company which does colonial business cannot call itself 'colonial,' it is obvious that, under a species of assertion that the word colonial is symbolical, the plaintiffs might prevent every other person using it as descriptive of his trade. It is obvious such a claim cannot be maintained; it would establish a monopoly of the use of the words 'home' and 'colonial.' Such a contention has never been before advanced. You may find in the Directory "The London Assurance Company," and "The London and Liverpool Assurance Company," "The Law Life Company," and "The Equity and Law Life Company," where the same words are used in both cases. So you have the 'Times' and the 'Hereford Times;' but no one ever supposed that the 'Times' newspaper could apply for an injunction. This is a stronger case."

An injunction was also refused in the case of the *London Assurance Corporation v. The London and Westminster Assurance Corporation, Limited*, 9 Jur., N. S. 843; 32 L. J., N. S. 664. See *Estcourt v. Estcourt Hop Essence Company*, 10 Ch. 276, where the Lord Chancellor was of opinion that an injunction would have been granted but for the plaintiff's laches.

It is expedient here to draw attention to a rule made some years ago by the Board of Trade, viz., that the registrar shall not register any memorandum of association for the incorporation of a company by a name of which the word "Royal" forms part, unless there be special circumstances for relaxing the rule, *e. g.*, where the word "Royal" has been used in connection with property which the company is to acquire, or where permission to use the word has been granted by the Home Office.

As to the
word royal.

This rule has been rigorously enforced, and accordingly

there are comparatively few companies on the register having names which include the word referred to. However, the "Royal" Alhambra and the "Royal" Aquarium appear to have found favour with the authorities.

Imperial.

The rule has, it is said, been recently extended to the words "Imperial" and "Queen."

Grave doubts exist as to the legality of the rule.

It is true that by subsection (2) of section 174 of the Act the Board of Trade are empowered to make such regulations as they think fit with respect to the duties to be performed by the registrars, assistant registrars, clerks, and servants employed in the registration office; but it appears extremely difficult to hold that this power enables the Board to make such a rule as that above referred to.

Duties of
Registrar.

By section 17 of the Act (*supra*, p. 74), it is provided that "the memorandum . . . shall be delivered to the registrar . . . who *shall* retain and register the same." He is not given any discretion. "The registrars under the Act are merely ministerial officers. Their duties are confined to seeing that the documents presented are in proper shape, and that the fees are paid." (*Thring*, 2nd ed., 164.)

Hence it would seem that on delivery of a memorandum of association in the form prescribed by the Act, and upon payment of the fees, the registrar is bound to register it. The memorandum will not be in proper form unless, if the proposed company is to be limited, the word limited is the last word of the name, but, subject to this, the registrar has no right to object to any name which the subscribers select, unless it is "identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive." [Sec. 17, *supra*, p. 75.]

It can scarcely be supposed that parliament intended to vest in the Board of Trade the power of making a rule that the registrar shall not perform the duty expressly cast on him by the Act, yet this is what the rule appears to amount to.

If the Board have authority to make this rule they are, it would seem, equally entitled to make any other restrictive rules, *e. g.*, that no memorandum shall be registered for the incorporation of a company having banking or insurance for its objects, or unless the whole of the nominal capital is thereby subscribed

for; or that the words "corporation," "society," or "institute," shall not be used without special permission.

If in any particular case the promoters of a company should desire to procure it to be registered with a name including the word "Royal," and the registrar should refuse, a mandamus might be applied for to compel him to perform his duty. It must however be borne in mind that the issue of this writ is discretionary, and it is possible that it might be refused if the Court considered that the assumption of such a name was calculated to deceive the public. But it is difficult to believe that this view would be taken. It cannot be supposed that the use of the word "Royal" as part of the name of a company necessarily implies that the Crown guarantees the respectability or solvency of the concern, or has granted to it the privilege of using the word "Royal," or indeed has any connection whatever with the company. Mandamus.

It might as well be supposed that every "Royal" Hotel, or "Royal" Tavern, is specially patronised by Royalty.

Still less can it be supposed that the words "Imperial" or "Queen" would be calculated to deceive.

Section 20, as above mentioned, p. 75, prohibits the registration of a second company with the same name as a subsisting company, "except in any case where such subsisting company is in course of being dissolved and testifies its consent in such manner as the registrar requires." The power thus given is frequently exercised, especially in cases of reconstruction or amalgamation. See further, *infra*, introductory notes to "Reconstruction." As to exception in Section 20.

Any company under the Act, with the sanction of a *special resolution* of the company [see Index], and with the approval of the Board of Trade, testified in writing under the hand of one of its secretaries or assistant-secretaries, may change its name, and upon such change being made, the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted, or to be instituted, by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued Power to change name.

How one of
two existing
companies
can obtain
name of other.

or commenced against the company by its former name. Section 13 of the Act. This power is not unfrequently exercised. The consent is very readily obtained. By means of this section, not only can a new company be formed with the same name as an existing one, but by the joint effect of this section, and Section 20 (*supra*, p. 75), an existing company can obtain the name of another existing company.

The latter passes a resolution to wind up voluntarily, and the liquidator gives the necessary consent; the former company meantime obtains the approval of the Board of Trade to changing its name to that of the dissolving company, and the registrar then issues the new certificate.

When change
of name
complete.

The change is not complete until the new certificate of incorporation for which the section provides is issued. *Shackleford, Ford, & Co. v. Dangerfield*, L. R. 3 C. P. 407.

Section 23 of
the Act of
1867. Omission
of word
"limited"
in name.

Where any association is about to be formed under the Act of 1862, as a limited company, if it proves to the Board of Trade that it is formed solely for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may, by licence, under the hand of one of the secretaries, or assistant-secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers, to the registrar, shall apply to an association so registered. The licence of the Board of Trade may be granted upon such conditions and subject to such regulations as the Board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the Board, be inserted in the memorandum and articles of association, or in both or one of such documents. Section 23 of the Act of 1867.

Licence from
Board of
Trade.

For form of licence, see *infra*, p. 101.

For memorandum of association, containing conditions usually imposed by the Board of Trade, see *infra*, p. 100.

Section 23 has proved very useful, and a large number of associations have been registered under it, generally as companies limited by guarantee, *e.g.*, law societies, chambers of commerce, trade protection societies, medical societies, agricultural associations, and parochial institutes. Two well-known examples are, "The Corporation of Foreign Bondholders," and "The Incorporated Council of Law Reporting for England and Wales." Many of these associations use the word "Incorporated" as part of their names, *e.g.*, "The Incorporated Law Society of —."

Section 23 of the Act of 1867 frequently resorted to.

As to the registered office of the company :—

Clause 2 of every memorandum must state in which part of the kingdom the registered office is proposed to be situate. This determines where the company is to be registered, and also the jurisdiction to which it will be subject. See Section 174, Sub-section 3, and Section 81 of the Act.

Registered office of company.

As to the objects of the company :—

Clause 3 of the memorandum is to state the objects for which the proposed company is to be established. It is now well settled that the objects of a company, as declared in the memorandum, are inalterable. Any thing done beyond the objects so declared is *ultra vires* the company. The law on this point has been finally settled by the House of Lords in the recent case of *The Ashbury Railway Carriage Company v. Riche*, 7 L. R. H. L. 653.

Objects of company.

Except as below stated.

Ashbury, &c., Co. v. Riche.

In that case the objects of the company were : "to make and sell, or lend on hire, railway carriages and waggons, and all kinds of railway plant, fittings, machinery, and rolling stock ; to carry on the business of mechanical engineers and general contractors, to purchase, lease, work, and sell mines, minerals, land, and buildings ; to purchase and sell as merchants timber, coal, metals, and other materials, and to buy and sell any such materials on commission or as agents." The directors agreed to purchase a concession for making a railway in a foreign country, and afterwards (on account of difficulties existing by the law of that country) agreed to assign the concession to a *société anonyme* formed in that country, which *société* was to supply the materials for the construction of the railway, and to

receive periodical payments from the English company. It was held by the House of Lords that this contract was *ultra vires* the company, and therefore wholly null and void.

Objects and conditions of the memorandum.
Section 12 of Act.

The Act treats the memorandum of association as containing the conditions of the company's existence, and by Section 12 it is provided that "Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name [Section 13, *supra*, p. 79], *no alteration shall be made by the company in the conditions contained in its memorandum of association.*"

Objects clause defines ambit and extent of vitality of company.

The company therefore comes into existence for the objects specified in its memorandum, and for those objects alone. It "is a mode of incorporation which contains in it both that which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation, and it states, if it is necessary so to state, negatively, that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified," per Lord Cairns, L. C., in the above case.

No ratification of act *ultra vires* the company.

Hence, as to a matter beyond the objects as specified in its memorandum, a company is powerless. And even though the members of the company, unanimously, authorise the directors to affix the seal of the company to a contract *ultra vires* the company, the contract is void. Neither can the members *ex post facto* sanction or ratify a contract by the directors which is *ultra vires* the company. The contract, being wholly void in its inception, is incapable of ratification. *Ashbury, &c., Co. v. Riche, ubi supra*. See also Lindley, 262, 350, 940. Pollock on Contracts, 88, *et seq.*

Objects ought to be fully stated.

This being the state of the law, it is essential to specify the objects of the company in the memorandum with the greatest care, for it may entail serious inconveniences if, after commencing business, the company finds that its objects are too restricted.

In such case the only remedy is to reconstruct the company, as to which see *infra*, "Reconstruction."

It is therefore exceedingly desirable, not merely to state the main objects of the company, but also any ancillary objects which the company is intended to have, and which are not necessarily implied from the statement of the main objects, or cannot with confidence be left to the operation of the general words with which every memorandum closes. Practice varies as to where to draw the line, but it has now become customary to set out the objects in considerable detail, and although this in most cases leads to the statement of unnecessary particulars, it is a fault on the right side. Indeed, it seems folly to leave in doubt that which can be rendered indisputable by the insertion of a few words.

It was formerly not unusual to state the objects in the memorandum with the utmost conciseness, and then in the articles to elaborate them—*e.g.*, the objects as stated in the memorandum might be: "The working of coal mines and the doing of all such things as are conducive or incidental thereto." The articles would, *inter alia*, contain power for the directors to borrow, to mortgage, to issue negotiable instruments, to sell the undertaking of the company in consideration of cash or shares, to promote other companies, to purchase and hold shares in other companies, to purchase the business of any other company, and undertake the liabilities thereof, and so forth.

Where this plan was adopted there was great danger that some of the powers expressly conferred on the directors by the articles would be held *ultra vires* the company. According to present practice the reverse of this plan is adopted. Thus in the above case the powers conferred by the articles on the directors would be inserted as objects of the company in the memorandum, while the articles would empower the directors to exercise all the powers of the company not by statute required to be exercised in general meeting, subject, perhaps, to certain restrictions. It is important, too, in framing the objects clause, to provide as far as may be for contingencies. Thus, if a company is formed to acquire and carry on a specific business—*e.g.*, that of a warehouseman, it may be expedient to declare (*inter alia*) the objects to be to carry on the business of a warehouseman, and with a view thereto to acquire the specified

Objection to very concise statement of objects.

Contingent objects.

business, and any other business of a like nature. For it may happen that the company will be unable to acquire the specified business, and in such case if its objects are too restricted, it must be wound up, although the members might be willing to invest in some other business. So if a company is to be formed to make a tramway from A. to B., the objects should be to make tramways in some specified district (*ag.*, the county of —) and in particular from A. to B., otherwise it would be unable to extend its operations if thought desirable. Of course, however, there may be cases in which it is desired so to restrict the objects clause, that if the particular property is not acquired, or is found unprofitable, or if the primary object fails, the company shall be wound up.

Use of general words in objects clause.

Effect of.

The objects clause of the memorandum generally closes with the following words: "And to do all such other things as are incidental or conducive to the attainment of the above objects, or any of them." These words only authorise the doing something, *bonâ fide*, connected with the objects to be attained, and in the ordinary course of business adapted to their attainment. *Joint Stock Co. v. Brown*, 3 Eq. 150. Thus, where a company was formed to work a colliery, it was held that these words authorised a purchase of it. *In re Baglan Hall Colliery Co.*, 5 Ch. 356. In that case Giffard, L. J., said: "It was urged that purchasing the colliery was not one of the objects; but the company could not work the colliery without first acquiring some interest in it, and I think, therefore, that the purchase of it was an act 'conducive' to the attainment of the primary object." Even in the absence of these words it would seem that the necessary power might have been implied. See *Leifchild's Case*, 1 Eq. 235, where a company was formed for using patented machinery, and it was held that a purchase of the patent was *intra vires*.

As to general words giving company power to do what it "thinks" conducive to attainment of objects.

It occasionally happens that a memorandum declares (*inter alia*) that the objects are: "To do all such other things as *the company may think* incidental or conducive to the attainment of the above objects," and it is objected that: "This attempt to bar the rights of the Courts to decide how far the objects of the company have been legally kept in view, is certainly inexpedient and probably useless." Lathom Brown, 343. Lord Cairns, however, does not appear to have considered the words objectionable or useless in the case *Peruvian Railways Co. v.*

Thames, &c., Co., 2 Ch. 617. The main object of the Peruvian Railways Company was the creation of a company in England, to be transferred into a *société anonyme* abroad, and there become the grantee of certain concessions for making railways. Lord Cairns, L. J., was of opinion that these objects did not invest the company with a power to issue negotiable instruments; but the memorandum contained the following words: "In order to the attainment of the main object of the company they may do, either in the United Kingdom or Peru, or elsewhere, whatsoever they may from time to time think incidental or conducive thereto." In reference to these words his Lordship observed: "Anything therefore which in the opinion of the company . . . is incidental or conducive to the main object of the company, which was the acquisition of concessions for railways, they may do. If, therefore, there comes to be a concession for a railway which is to be paid for by instalments, it is, I think, beyond all possibility of dispute, that, if they think it incidental or conducive to the attainment of the concession, when the instalments become or are about to fall due, in place of making calls on the shareholders, they should give a bill of exchange, payable at a future day, for the amount of the instalments, they may do so. The words seem to me so wide that they necessarily include a power of that kind."

"Think incidental."
Lord Cairns' view.

So, again, in *Joint Stock Discount Co. v. Brown*, where the words in the memorandum were: "and the doing of all such things as the *directors* shall consider incidental or conducive to the attainment of the above objects," no suggestion was made by Page-Wood, V.-C., that the use of such words was improper. Such general words have been used in a very large number of cases. See *Stewart's Case*, 1 Ch. 574; *Zulueta's Claim*, 5 Ch. 444; *Marshall v. Glamorgan, &c., Co.*, 7 Eq. 129; *Mills v. Northern, &c., Co.*, 5 C. H. 621; *Peel's Case*, 2 Ch. 675. In the case last mentioned the words were: "And the doing of all such [other] things [as the company from time to time consider to be] incidental or conducive to the attainment of the above objects [or otherwise for the benefit of the company]. The Registrar thought the terms too wide; with his sanction they were struck out without communication with the subscribers who had already executed the memorandum, and the document was then registered. Lord Cairns, L. J., said that he thought the Registrar's conduct was in the very highest degree

Joint Stock, &c., Co. v. Brown.

Extensive general words often used.

censurable, but he entirely agreed in his opinion that the terms of the memorandum were too wide.

Practice of
office.

Until recently it was the practice of the office of the Registrar of Joint Stock Companies to require general words to follow the statutory forms; but this practice has now, the writer understands, been abandoned, and general words may be made as extensive as desired. It is, however, generally considered better not to rely too much on the effect of general words, but to state the objects in sufficient detail, and conclude as in the statutory forms.

Power to
extend objects
cannot be
given.

Formerly, it was by no means uncommon to insert in the objects clause of the memorandum words to the following effect: "And also such additional or extended objects as the company may from time to time determine." Examples may be found in the following cases: *Clinch v. Financial Corporation*, 5 Eq. 452; *Syers v. Brighton Brewery Co.*, 13 W. R. 221; compare with *Ashbury Railway, &c., Co. v. Riche*, L. R. 7 H. L. 653.

Such words ought never to be inserted, and the Registrar might properly decline to register a memorandum containing them, on the ground that the objects of the company are not, in fact, stated. *Barned's Banking Co., Peel's Case*, 2 Ch. 675. If, nevertheless, he registers the company, the words must be treated as null and void. *Ashbury, &c., Co. v. Riche*, L. R. 7 H. L. 653.

Mortgage
Debenture
Act.

It may here be mentioned that under the Mortgage Debenture Act, 1865, 28 & 29 Vict. c. 78, s. 3, amended by 33 & 34 Vict. c. 20, companies formed under the Act of 1862 to advance money on land, &c., may limit their objects by special resolution so as to obtain the benefit of the above Acts. This power, however, appears to apply only to companies "already constituted," *i.e.*, in 1865.

We have now considered the clauses of the memorandum as to the name, office, and objects of the company. These are the only clauses contained in the memorandum of an unlimited company. A company limited by shares has two more clauses, namely, as to the limited liability and as to the capital. Of these presently.

Clause as to
guarantee.

A company limited by guarantee has only one more clause, namely, that referring to the guarantee. As to the form of this, see *infra*, p. 98. The amount of the guarantee will

depend on the nature of the company. If the company requires extensive credit it will be well to make the amount of the guarantee considerable, *e.g.*, 50% or 100% per member. But the limitation of liability by guarantee is rarely adopted, except in the case of law societies, chambers of commerce, and other societies of an analogous character (see *supra*, p. 81); and such societies do not require much credit. Accordingly the amount of the guarantee commonly runs from 5s. to 5% or 10% per member. The same kind of company is generally selected where the objects are mutual assurance; but mutual assurance societies do not require much credit as regards outsiders, and the amount of the guarantee has no bearing on the liability of members *inter se*. In mutual companies the liability of the members, *inter se*, to contribute to the losses in respect of assurance is, generally, unlimited.

Amount of
guarantee.

With regard to a company limited by shares, the memorandum must also contain a declaration that the liability is limited. This declaration does not prevent the articles from extending the liability of the members *inter se*. *Hill's Case*, 20 Eq. 59; *Peninsula Co. v. Fleming*, 27 L. T. N. S. 93.

Clause as to
limit of
liability.

The 5th clause of the memorandum of a company limited by shares must state the nominal capital and the number of shares into which it is divided, with the amount of each share.

Capital.

The capital so registered may be varied in the following particulars. It may be increased; it may be consolidated and divided into shares of larger amount than the existing shares; any paid-up shares may be converted into stock; the shares may be sub-divided; and the capital may, with the sanction of the Court, be reduced. See further *infra*, "Resolutions," and notes thereto.

As the capital can be readily increased, there is no object in starting with a very large nominal capital.

The amount of the shares depends on several considerations. If the public are to be invited to apply for shares, the amount should be moderate, for it is generally found that there is a better market for 5% or 10% shares than for larger ones. Indeed 1% shares are very common. Moreover, it is generally expedient not to leave much, if any, liability on the shares issued. So long as shares are not fully paid up, their value, unless in exceptional cases, is impaired by the existence of

Amount of
shares.

Objection to
shares only in
part paid up.

How to get
rid of further
liability.

the liability; and if the company should experience reverses, its shares may become almost unmarketable. Of course, under the Act of 1867, the liability may be reduced or extinguished; but the process is tedious and expensive, and not unlikely to damage the credit of the company. However, so burdensome are shares subject to any considerable liability, that the Act of 1867 is not uncommonly resorted to to get rid of it. Or, what in many cases is much simpler, the company is re-constructed as a company with the same name and objects, but with reduced liability. See *infra*, "Reconstruction."

Of course, however, there may be cases in which the security afforded by the existence of a large amount of uncalled capital may be deemed requisite or expedient, *e.g.*, in a banking or insurance company.

Whether
power to issue
preference
shares to be
inserted in
capital clause.

Some persons frame the capital clause of the memorandum of a company limited by shares as follows: "The capital of the company is 20,000*l.*, divided into 2,000 shares of 10*l.* each, with power to increase the capital and to issue any of the original shares or shares of increase of capital as preferential or guaranteed or deferred shares." See another Form, *infra*, Articles of Association, Miscellaneous Clauses, notes to Form 19.

The object of so framing the clause is to secure the power to issue preference shares, for some doubt existed at one time as to whether a power in the articles alone was sufficient authority. This doubt no longer exists [*infra*, Articles, Miscellaneous Clauses, note to Form 1], and there seems, therefore, no sufficient reason for so framing the capital clause. See *infra*. Where, however, the original capital as stated in the memorandum is, *ab initio*, intended to be divided into shares of different classes, it is usual to state the fact in the memorandum, *e.g.*, "The capital of the company is 100,000*l.*, divided into 5,000 preference shares of 10*l.* each, and 10,000 deferred shares of 5*l.* each."

See Forms, *infra*, Articles of Association, Miscellaneous Clauses, Form 2, *et seq.*

Association
clause.

On referring to the Forms of memoranda of association given below (p. 96, *et seq.*), it will be seen that each of them closes with a declaration that the subscribers desire to be formed into a company.

In company
limited by
shares.

In a company limited by shares the declaration is as follows: "We, the several persons whose names and addresses are sub-

scribed, are desirous of being formed into a company, in pursuance of this memorandum of association, [and we respectively agree to take the number of shares in the capital of the company set opposite our respective names].”

In a company limited by guarantee, or unlimited, the form is the same, with the omission of the words enclosed in brackets.

In company limited by guarantee or unlimited.

It will be observed that Section 14, *supra*, p. 74, requires that, “in a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite his name in the memorandum of association the number of shares he takes.”

It is generally considered that the word “memorandum” in this paragraph is an error for “articles.” See *Buckley*, p. 7. And there can be little doubt that this is so; for otherwise the Forms C. and D. in Schedule II. to the Act, being memoranda of companies limited by guarantee and unlimited respectively, offend against the rule laid down in Section 14. Thus it will be seen that in each of the Forms C. and D. the company has a capital divided into shares, and yet in neither case does the memorandum specify the number of shares which each subscriber takes.

On the other hand, it is to be observed that in each case the articles conclude with a special declaration that: “We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names,” and opposite the name of each subscriber the number of shares he takes is accordingly specified. So that if the word “memorandum” in the paragraph at end of clause 14 is to be read “articles,” the Forms C. and D. are perfectly correct: otherwise the very forms which are given by the Act as examples *ex facie* offend against the express provisions of the Act. It seems more likely that one word should be wrong in Section 14 than that the Forms C. and D. should be so incorrectly framed.

The memorandum may be in writing, but, where articles are registered, it is usually printed with them. If in writing, it is commonly filled in upon a skeleton printed form. It must be signed by at least seven persons, in the presence of, and be attested by, one witness at least. It is very common, though not necessary, for the same witness to attest the signatures of all the subscribers.

Memorandum may be in writing or printed.

Witness.

Certificate evidence that requisitions of Act complied with.

The Act provides that a certificate of the incorporation of any company, given by the registrar, shall be conclusive evidence that all the requisitions of the Act in respect of registration have been complied with.

Thus, in *Peel's Case*, 2 Ch. 674, which has been already mentioned, *supra*, p. 85, the memorandum of a company when brought to the registrar was objected to by him as being too wide in its terms, whereupon the bearer, then and there, without any communication with the persons who had signed it, made alterations to remove the objections of the registrar, who at once registered it in the altered form. It was held, nevertheless, that the certificate of registration having been issued, Section 13 of the Act applied, and that no person could be allowed to go back and enter into an examination of the circumstances attending the original registration.

Infant subscriber.

So, also, in the *Nassau Phosphate Co.*, 2 Ch. Div. 610, an order had been made to wind up the company, and it was subsequently discovered that one of the seven subscribers to the memorandum was an infant. It was held, nevertheless, that the winding-up order was valid, since the certificate of registration which had been issued precluded any question.

Modification of conditions contained in memorandum.

As to how far the conditions contained in the memorandum of association of a company may be modified, see Section 12 of the Act, *supra*, p. 82, and *infra*, "Resolutions."

Effect of subscribing memorandum.

As to the effect of subscribing the memorandum of association: By Section 23 of the Act it is provided that:—

"The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is on the register of members, shall be deemed to be a member of the company."

Hence a subscriber to the memorandum is indisputably a member of the company.

Subscription an agreement to take and pay for shares.

In a company limited by shares, no subscriber shall take less than one share, and each subscriber shall write opposite to his name the number of shares he takes. Section 8 of the Act.

The subscriber agrees to take from the company the shares set opposite to his name, and to pay for them in money or money's worth. *Mignotti's Case*, 4 Eq. 238. The fact that no shares have ever in fact been allotted to him, and that his name has never been put on the register, will not relieve him : *Evan's Case*, 2 Ch. 427, unless all the shares have been allotted to other persons. *Mackley's Case*, 1 Ch. Div. 247.

The contract therefore is not fulfilled by the subscriber acquiring the number of shares for which he has subscribed from some other member of the Company. *Forbes & Judd's Case*, 5 Ch. 270.

As to what is payment in money's worth, see *Drummond's Case*, 4 Ch. 772 ; *Pell's Case*, 8 Eq. 222, and 5 Ch. 11 ; *Jones' Case*, 6 Ch. 48.

A clause in the articles that shares subscribed for in the memorandum shall be deemed to be fully paid up is ineffectual. *Dent's Case*, 8 Ch. 776 ; *Crickmer's Case*, 10 Ch. 614 ; *Firmstone's Case*, 20 Eq. 525.

Clause in articles cannot relieve subscriber from liability.

The shares will be liable to payment in cash unless otherwise provided by a contract in writing, filed pursuant to the 25th Section of the Act of 1867. See *supra*, p. 6.

As to contract filed pursuant to Section 25 of the Act of 1867.

The contract must identify the shares, *e.g.*, it should recite the fact of the subscription or intended subscription of the memorandum, and provide that the property, services, or whatever the consideration may be, shall be accepted by the company in payment for the shares subscribed for. *Fothergill's Case*, 8 Ch. 270 ; *Coates' Case*, 17 Eq. 169.

By subscribing the memorandum, a contract is made to pay for the shares in cash, and the effect of Section 25 is, "that the liability to pay in cash cannot be altered at all by subsequent agreement and arrangement with the directors ; it can only be affected by a written agreement, which written agreement must be entered into before the shares are issued, and must be registered." Per Mellish, L. J., *Fothergill's Case*, 8 Ch. 282.

As to what is meant by the "issue" of the shares, see *supra*, p. 7.

When shares "are issued."

A contract made on behalf of the company before its incorporation is a sufficient contract within Section 25 of the Act of 1867, if it be adopted and acted upon by the company. See *supra*, p. 10.

Contract made before incorporation sufficient if filed.

Whether
intending
vendor should
subscribe.

It does not generally seem expedient, where a preliminary agreement is made for the sale of property to a trustee for a proposed company, that the vendor should subscribe the memorandum for the number of shares which are to be allotted to him, as fully paid up, pursuant to the contract; for there is always the possibility that the company will not adopt the contract. However, in many cases there is no risk of this, and consequently no practical danger in subscribing.

As to what is payment in cash, see *supra*, p. 12.

The memorandum irrevocably binds a subscriber thereof to take the number of shares set opposite his name from the company, but if he subscribes for preference shares, he may subsequently agree with the company to take ordinary shares instead, for as regards matters not required by the Act to be stated in the memorandum, the contract contained in it is revocable. *Duke's Case*, 1 Ch. Div. 623.

By Section 19 of the Act it is provided as follows:—

Member
entitled to
copy of
memorandum
and articles.

"A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to any member at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy, and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this Section, the company so making default shall, for each offence, incur a penalty not exceeding 1*l*."

Section 21 of the Act is as follows:—

Certain
companies
not to hold
more than two
acres without
licence.

"No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit."

To what
companies the
Section
applies.

As to the nature of the associations to which the above Section applies, see *Ex parte Hargrove*, 10 Ch. 545, note (1).

Chambers of commerce, law societies, medical institutes, trade protection societies, and the like generally involve the acquisition of gain by the company or by the individual

members thereof, and are consequently not affected by the above Section. As to what "gain" is, see *Ex parte Hargrove, ubi supra*.

As to stamping the memorandum of association :

Stamps and
fees.

By Section 11 of the Act, the memorandum is required to bear the same stamp as if it were a deed, *i.e.*, a 10s. stamp.

In addition to this it must before registration be stamped with companies fee stamps, in respect of the fees payable under Section 17 of the Act. See *supra*, p. 74.

The tables of fees referred to in Section 17, are as follows :—

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR of JOINT-STOCK COMPANIES by a company having a capital divided into shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed 2,000£., a fee of	2	0	0
For registration of a company whose nominal capital exceeds 2,000£., the above fee of 2£., with the following additional fees, regulated according to the amount of nominal capital (that is to say) :			
	£	s.	d.
For every 1,000£. of nominal capital, or part of 1,000£., after the first 2,000£., up to 5,000£.	1	0	0
For every 1,000£. of nominal capital, or part of 1,000£., after the first 5,000£., up to 100,000£.	0	5	0
For every 1,000£. of nominal capital, or part of 1,000£., after the first 100,000£.	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000£., or part of a 1,000£., as would have been payable if such increased capital had formed part of the original capital at the time of registration.			

£ s. d.

Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.

For registration of an existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

For registering any document hereby required or authorised to be registered, other than the memorandum of association 0 5 0

For making a record of any fact hereby authorised or required to be recorded by the registrar of companies, a fee of 0 5 0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR of JOINT-STOCK COMPANIES by a company not having a capital divided into shares.

£ s. d.

For registration of a company whose number of members as stated in the articles of association does not exceed 20 2 0 0

For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 5 0 0

For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.

For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of 20 0 0

	£	s.	d.
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than 20% in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the registrar of companies, a fee of	0	5	0

MEMORANDA OF ASSOCIATION.

PRECEDENTS.

I.

Prec. I.

MEMORANDUM of a COMPANY, LIMITED by SHARES.

“The Companies Acts, 1862 and 1867.”

Company Limited by Shares.

Memorandum of Association of The——Company, Limited.

1. The name of the company is “The —— Company, Limited.”

See *supra*, p. 75, *et seq.*

2. The registered office of the company will be situate in England [or Scotland, or Ireland, as the case may be.]

See *supra*, p. 81.

3. The objects for which the company is established are :—

See *supra*, p. 81, *et seq.*

(1.) To, &c., see *infra*, “Objects,” p. 113, *et seq.*

4. The liability of the members is limited.

See *supra*, p. 87.

5. The capital of the company is £——, divided into —— shares of £—— each.

See *supra*, p. 87.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respec-

tively agree to take the number of shares in the capital of the Company set opposite our respective names. Prec. I.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. JOHN JONES, of, &c., Merchant.	1
2. JOHN SMITH, of, &c., Carpenter.	1
3. THOMAS GREEN, of, &c., Grocer.	1
4. HENRY THOMPSON, of, &c., Commission Agent.	1
5. CHARLES EVANS, of, &c., no occupation.	1
6. WILLIAM DAY, of, &c., Surgeon.	1
7. ALFRED JONES, of, &c., Wine Merchant.	1
Total Shares taken	7

Dated the 22nd day of June, 1876.

WITNESS to the above signatures,

SAMUEL WELLER,
10, North Street,
Westminster.

Or,

WITNESS to the above signatures of John Jones, John Smith, William Day, and Alfred Jones,

SAMUEL WELLER,
10, North Street,
Westminster.

WITNESS to the above signatures of Thomas Green, Henry Thompson, and Charles Evans,

MARTIN CLARKE,
2, Essex Street,
Strand,
London, W.C.

Or,

WITNESS to the above signatures other than that of Thomas Green,

SAMUEL WELLER, &c.

WITNESS to the above signature of Thomas Green,

MARTIN CLARKE, &c.

PRECEDENT II.

Prec. II. MEMORANDUM of a COMPANY, LIMITED by GUARANTEE.

“The Companies Acts, 1862 and 1867.”

Company Limited by Guarantee.

Memorandum of Association of The —— Company, Limited.

1. The name of the company is “The —— Company, Limited.”

See supra, p. 75.

2. The registered office of the company will be situate in England, [*or* Scotland, *or* Ireland.]

See supra, p. 81.

3. The objects for which the company is established are :—
(1.) To, &c., *see infra*, p. 109, *et seq.*

4. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding 10*l.* [*See supra*, p. 87.]

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

See supra, p. 89.

Names, addresses, and descriptions of subscribers.

Ut supra, p. 97.

Dated the —— day of ——, 1876.

WITNESS, &c., *see supra*, p. 97.

PRECEDENT III.

MEMORANDUM of ASSOCIATION of a COMPANY, LIMITED by Pres. III.
 GUARANTEE, and REGISTERED PURSUANT to SECTION 23
 of THE COMPANIES ACT, 1867.

See *supra*, p. 81, *et seq.*

The — Incorporated Law Society.

Memorandum of Association.

1. The name of the society is "The — Incorporated Law Society."

See *supra*, p. 75, *et seq.*

[*or*, "The — Chamber of Commerce," *or*, "The — Medical Institute."]

2. The registered office of the society, [*supra*, p. 81.]

3. The objects for which the society [*or*, chamber, *or*, Institute, &c.] is established are :—

See *supra*, p. 81.

(1.) To, &c., see *infra*, p. 109, *et seq.*

4. The income and property of the society, whencesoever derived, shall be applied solely towards the promotion of the objects of the society, as set forth in this memorandum of association, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, by way of profit, to the persons who at any time are, or have been members of the society, or to any of them, or to any person claiming through any of them. Provided that nothing herein contained shall prevent the payment, in good faith, of remuneration to any officers or servants of the society, or to any member thereof, or other person, in return for any services actually rendered to the society.

See *supra*, p. 8.

5. The fourth paragraph of this memorandum is a condition on which a licence is granted by the Board of Trade to the society, in pursuance of Section 23 of The Companies Act,

Prec. III. 1867. For the purpose of preventing any evasion of the terms of the said fourth paragraph, the Board of Trade may, from time to time, on the application of any member of the society, impose further conditions, which shall be duly observed by the society.

6. If the Society acts in contravention of the fourth paragraph of this memorandum, or of any such further conditions, the liability of every member of the council of the society, [this will be varied according to the circumstances,] shall be unlimited, and the liability of every member of the society who has received any such dividend, bonus, or other profit as aforesaid, shall likewise be unlimited.

7. Every member of the society undertakes to contribute to the assets of the society, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the society contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding five pounds [or ten shillings, or whatever the amount fixed on may be,] or in case of his liability becoming unlimited, such other amount as may be required in pursuance of the last preceding paragraph of this memorandum.

8. If upon the winding up or dissolution of the society there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the society, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the society, to be determined by the members of the association at or before the time of dissolution, and in default thereof by such judge of the High Court of Justice as may have or acquire jurisdiction in the matter.

The above clause is now required by the Board to be inserted in all cases. It has only recently come into use. It would not seem to prevent a society from dividing its surplus assets, and then winding up.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a society in pursuance of the memorandum of association.

Names, addresses, and descriptions of subscribers.

[See *supra*, p. 97.]

Dated the — day of —.

WITNESS, &c. [see *supra*, p. 97.]

Proc. III.

An association desiring to be incorporated with limited liability, but without the word limited as part of its name, and for that purpose to obtain a licence from the Board of Trade pursuant to Section 23 of the Act, should, according to the rules now in force, make a written application to the Board for a licence, and together with such application, should transmit for their consideration a draft, in duplicate, of the proposed memorandum and articles of association. The drafts and any subsequent revisions that may be required should, whether in print or manuscript, be on foolscap-sized paper. If the Board of Trade are satisfied that the application should be entertained they will furnish a notice of such application, to be inserted in a local newspaper for the information of the public, and if after the expiration of a limited time there appears to be no sufficient reason why the licence should not be granted, the Board of Trade will approve the memorandum and articles of association, with or without amendment, and grant a licence.

The Board of Trade will require to have the memorandum and articles of association settled on their behalf by their counsel, at the expense of the applicants, for which purpose a fee of five guineas must accompany the application. A cheque for the amount should be made payable to an assistant secretary of the Board of Trade. The Board of Trade will not be responsible for the memorandum and articles being properly framed as regards the interests of the association.

The Board sanction the omission of the word "Company" in the memorandum and articles, and the substitution of the word chamber, society, corporation, or the like.

The names of the subscribers to the memorandum should be in full, the addresses should be definite, giving, where practicable, the name of the street and the number of the house.

The following is a specimen of the licence issued by the Board :—

WHEREAS it has been proved to the Board of Trade that the — CHAMBER OF COMMERCE, which is about to be registered under the Companies Act, 1862, and the Companies Act, 1867, as an association limited by guarantee, is formed for the purpose of promoting objects of the nature contemplated by the 23rd Section of the last mentioned Act, and that it is the intention of the said chamber that the income and property of the association, whencesoever derived, shall be applied solely towards the promotion of the objects of the association, as set forth in the memorandum of association of the said chamber, and that no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend or bonus, or otherwise howsoever, by way of profit to the persons who at any time are, or have been members of the said association, or to any of them, or to any person claiming through any of them.

Now, therefore, the Board of Trade, in pursuance of the powers in them vested, and in consideration of the provisions and subject to the conditions contained in the memorandum of association of the said chamber, as subscribed by eleven members thereof on the 4th day of June, 1876, do by this their licence direct the — CHAMBER OF COMMERCE to be

Prec. III. registered with limited liability, without the addition of the word "limited" to its name.

Signed, by order of the Board of Trade, this — day —, 18 —.

HENRY G. CALCRAFT,

An Assistant Secretary of the Board of Trade.

PRECEDENT IV.

Prec. IV.

MEMORANDUM *of an* UNLIMITED COMPANY.

"The Companies Acts, 1862 and 1867."

. Memorandum of Association of The — Company.

1. The name of the company is "The — Company."

See *supra*, p. 75.

2. The registered office, [*supra*, p. 81.]

3. The objects for which the company is established are :—

See *supra*, p. 81, and *infra*, p. 109, *et seq.*

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, and descriptions of subscribers. See *supra*, p. 97.

Dated the — day of —.

WITNESS [*supra*, p. 97].

OBJECTS.

Every memorandum of association must, among other things, state "the objects for which the proposed company is to be established." *Supra*, p. 81, *et seq.*

The objects of course, vary infinitely, but the forms given below, p. 109, *et seq.*, include many of those which are now very commonly adopted. See the Forms of memoranda, *supra*, p. 96, *et seq.*, as to place in which statement of objects to be inserted.

COMMON FORMS

Common
Forms.

FOR USE IN CONNECTION WITH THE OBJECTS CLAUSES GIVEN
infra, p. 109, *et seq.*

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TO ADOPT AGREEMENT.

1. To adopt and carry into effect an agreement, dated, &c., and made, &c., for the purchase of the business now carried on by Messrs. —, with the manufactory, lands, buildings, plant, stock-in-trade, chattels, and effects, used in the said business, and the contracts subsisting in relation thereto, and the goodwill thereof.

To carry on the said business as heretofore carried on, and generally to carry on the business of a — in all its branches.

There does not appear to be any particular advantage in mentioning the preliminary agreement in the memorandum, though it is not uncommonly done. Where the company is registered without articles it may be useful, in order that every member may be fixed with notice of the agreement. But in most cases it seems better to state in general terms the purchase of the property to be one of the objects, and then, if desired, the agreement can be approved by the articles. The mention of the agreement as one object in the memorandum does not bind the company to adopt it any more than its mention in the articles. See *infra*, Articles of Association, Miscellaneous Clauses, Notes to Form 1.

**Common
Forms.**

TO ADOPT AGREEMENT.*Another Form.*

2. To adopt and carry into effect, either with or without modification, as may be arranged, an agreement, dated, &c., and made between A., of the one part, and B., on behalf of this company, of the other part, a copy whereof is set forth in the schedule to the articles of association of the company, [or, a copy whereof has for the purpose of identification been indorsed with the signatures of the subscribers to this memorandum.]

TO ADOPT AGREEMENT.*Another Form.*

3. To enter into and carry into effect an agreement which has been already prepared, and is expressed to be made between A. B., of the one part, and the above-named company of the other part, and a copy whereof has, for the purpose of identification, been indorsed with the signatures of the subscribers to this memorandum.

TO ACQUIRE BUSINESS, ETC.

4. To purchase or otherwise acquire certain mineral properties, ironworks, and collieries, known as the —, together with the veins of coal, ironstone, fire-clay, and other minerals, under the same, and the wharves, tramways, and railways, hereditaments, stock-in-trade, chattels, effects, and property, held or used in connection therewith.

TO ACQUIRE BUSINESS, ETC.*Another Form.*

5. To purchase or otherwise acquire the business heretofore carried on by A. and B. in partnership, at the — Works, &c., and the goodwill thereof, and all or any part of the real and personal property of, or belonging to, or used in or about or in connection with the said business, and to undertake all or any part of the liabilities of the said A. and B. in relation thereto.

TO ACQUIRE BUSINESS.

Common
Forms.*Reconstruction.*

6. To purchase, or otherwise acquire, and undertake, all or any part of the business, property, and liabilities, of The — Company, Limited.

This will be one of the objects of a company formed for reconstruction purposes. See *infra*, "Reconstruction."

TO ACQUIRE BUSINESS, ETC.

Amalgamation.

7. To purchase, or otherwise acquire, all or any part of the property, assets, and liabilities of the following companies, namely, the A. Company, Limited, the B. Company, Limited, and the C. Company, Limited.

This is suitable for a company formed to effect an amalgamation of several existing companies. See *infra*, "Amalgamation."

TO PURCHASE PROPERTY, ETC.

8. To purchase, take or lease or in exchange, hire, or otherwise acquire, any real and personal property, and any rights, or privileges, necessary or convenient for the purposes of the company [and in particular any land, buildings, easements, machinery, plant, and stock-in-trade.]

A form to this effect is generally inserted. Sometimes the words in brackets are omitted, but it is usual to enumerate a number of items which the company will be likely to require.

TO BORROW AND MORTGAGE, ETC.

9. To borrow or raise money by the issue of, or upon, bonds, debentures, bills of exchange, promissory notes, or other obligations, or securities, of the company, or by mortgage or charge of all or any part of the property of the company, or of its uncalled capital, or in such other manner as the company shall think fit.

The above is now very commonly inserted. In most cases it is unnecessary, for a power to borrow is readily implied. *Bryon v. Metropolitan, &c., Omnibus Co.*, 3 D. G. & J. 123; 6 W. R. 817; *in re Marine*

**Common
Forms.**

Mansions Co., 4 Eq. 601; *ex parte City Bank*, 3 Ch. 758. Where a company has power to borrow it has an implied power to secure the repayment of borrowed money by mortgage. *Australian, &c., Co., v. Mounsey*, 4 K. & J. 733; *Bryon v. Metropolitan, &c., Co.*, *ubi supra*. Indeed it was said in the case of the *Patent File Co.* (6 Ch. 85), by Mellish, L. J., that a company can mortgage unless expressly prohibited from doing so. See also *Gibbs' and West's Case*, 10 Eq. 212.

As however the objects are now usually stated in detail, it is only consistent expressly to invest the company with power to borrow and to mortgage.

As to mortgaging uncalled capital, see *infra*, Debentures, Introductory Notes.

To ACCEPT BILLS, ETC.

10. To make, accept, indorse, and execute, promissory notes, bills of exchange, and other negotiable instruments.

A company cannot issue negotiable instruments unless it has an express or implied power given to it by the memorandum. An implied power arises where the business of the company is one which cannot, in its ordinary course, be carried on without the issue of such instruments, or where upon a fair construction of the memorandum the power appears incidental or conducive to the objects.

In re Peruvian Railways Co., 2 Ch. 623. In this case Malins, V.-C., expressed an opinion that "having regard especially to the 47th section of the Act of 1862, all companies constituted under that Act might issue bills of exchange." See Section 47, *infra*.

However, when the matter came before the Appeal Court, Lord Cairns said: "In my opinion the Act does not give that power [of accepting bills of exchange and issuing negotiable instruments] to companies as an incident of their incorporation under it, but leaves the power of a company so incorporated, with regard to negotiable instruments, to be determined upon the proper construction of the memorandum and articles of association."

The power to accept and issue bills and other negotiable instruments is one with which it is generally desired to endow a company, and where the desire exists it is expedient to provide accordingly in the memorandum, at any rate where the company is not formed for purposes which necessarily imply the power.

The following are cases in which it has been held that companies had no such power. *Bramah v. Roberts*, 3 Bing. N. C. 963, which was a case of a Gas company; *Dickenson v. Valpy*, 10 B. & C. 128, in the case of a Mining company; *Steele v. Harmer*, 14 M. & W. 881, in the case of a Cemetery company; *Bull v. Morrell*, 12 Ad. & E. 745, in the case of a Salt and Alkali company; *Thompson v. Universal Salvage Co.*, 1 Ex. 694, in the case of a Salvage company; *Bateman v. Mid-Wales Railway Co.*, L. R. 1 C. P. 499, in the case of a Railway company.

To PURCHASE OTHER BUSINESSES.

11. To purchase, or otherwise acquire, and undertake, all or any part of the business, property, and liabilities, of any

other company [or, of any partnership or person carrying on any business which the company is authorised to carry.] Or Common Forms.
omit the words in brackets, and substitute these: the objects of which shall be altogether or in part similar to those of this company.

The above ought to be expressly specified among the objects if the company is intended to have the power. *Ernest v. Nicholls*, 6 H. L. 401; Lindley, 480. It may, however, possibly be implied from general words. *The Era Assurance Society, Williams' Case*, 32 L. J. Ch. 207; 9 W. R. 67.

Express mention should be made of the liabilities. But see *Overend & Gurney Co. v. Gibb*, L. R. 5 H. L. 480, as to what is sufficient.

TO TAKE SHARES IN OTHER COMPANIES.

12. To take, or otherwise acquire, and hold shares in any other company having objects altogether or in part similar to those of this company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this company.

Where a company is intended to have such a power as above, it ought to be expressly specified in the memorandum, unless the objects stated necessarily imply the power. See the *Royal Bank of India's Case*, 4 Ch. 252.

It was at one time contended that it was illegal for one company to take shares in another, but the contrary is now well settled. See *in re Barned's Banking Co.*, 3 Ch. 105, and the case last cited. The only question is whether the memorandum expressly or impliedly gives the power. Accordingly, where one of the objects of the company was, "To purchase or accept any obligations, bonds, debentures, notes, and shares, in any foreign or English company, and to negotiate the sale of any such securities," it was held that the company had power to acquire shares in another company. *In re Barned's Banking Co.*, *ubi supra*. See also *International Contract Company's Case*, W. N., 1869, 24.

But where the objects of a discount company was, among other things, stated to be "the making advances and procuring loans on, and the investing in, securities," it was held that the company had no power to acquire shares in another company for the purpose of increasing its connections. *Joint Stock Discount Co. v. Brown*, 8 Eq. 381.

TO PROMOTE OTHER COMPANIES, ETC.

13. To promote any other company for the purpose of acquiring all or any part of the property and liabilities of this company, and to take, or otherwise acquire, and hold shares in any such company, and to guarantee the payment of any debentures or other securities issued by any such company.

**Common
Forms.**

The above form, with more or less variation, is sometimes used. It is obvious that if the company is to have such powers they ought to be conferred by the memorandum. See *supra*, p. 83.

TO INVEST, ETC.

14. To invest the monies of the company not immediately required upon such securities as may from time to time be determined.

The above is frequently inserted, though probably not necessary. As to what it does *not* authorise, see the *Joint Stock Discount Co. v. Brown*, 8 Eq. 381, cited *supra*, p. 107.

TO BUILD, ETC.

15. To construct, maintain, and alter any buildings, or works, necessary or convenient for the purposes of the company.

This is very commonly inserted. It is modified, more or less, to suit different companies.

TO RECEIVE MONEY ON DEPOSIT.

16. To receive money on deposit at interest or otherwise.

This power is generally taken by investment and loan companies and by Co-operative Stores. It is also very commonly expressly taken by banking, discount, and financial companies. A company which takes it would appear to be a "deposit company" within Section 44 of the Act, and therefore bound to make the annual statement of assets and liabilities, &c., thereby required.

TO SELL, ETC.

17. To sell, improve, manage, develop, lease, mortgage, dispose of, or otherwise deal with, all or any part of the property of the company.

This is almost always inserted, and invests the company with ample powers of dealing with its property. See *in re Patent File Co.*, 6 Ch. 88.

GENERAL WORDS.

18. To do all such other things as are incidental or conducive to the attainment of the above objects.

As to this, see *supra*, p. 84, *et seq.*

LIST OF OBJECTS.

Objects.

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OBJECTS.

See *supra*, p. 81.

I.

WATERWORKS.

1. To supply the town of —, in the county of —, and Waterworks Company.

Objects.

the neighbourhood thereof, with water, and to carry on the business of a Waterworks company in all its branches.

2. To purchase, take on lease, hire, or otherwise acquire, any real and personal property necessary or convenient for the purposes of the company, and, in particular, any lands, buildings, machinery, plant, patents, waters, wells, streams, rights, and easements.

3. To sink wells and shafts, and to make, build, and construct, lay down, and maintain reservoirs, waterworks, cisterns, culverts, filter-beds, main and other pipes and appliances, and to execute and do all other works and things necessary or convenient for obtaining, storing, selling, delivering, measuring, and distributing water, or otherwise for the purposes of the company.

4. To obtain from the Board of Trade any provisional order for enabling the company to carry its objects into effect.

A Waterworks company requires statutory powers. These can be obtained by Special Act, or, in many cases, by provisional order of the Board of Trade, under the "Gas and Water Facilities Act, 1870," and the "Amendment Act of 1873." Such provisional orders are made in considerable numbers every year. For extracts from the Acts, specimen order, and rules of Board of Trade as to applications, see *infra*.

5. If thought fit to obtain any Act of Parliament for the purpose last aforesaid, or for the dissolution of the company and the incorporation of its members as a new company for any of the objects specified in this memorandum.

It is by no means uncommon, where it is desired to procure the incorporation of a company by Special Act, for the promoters, in the first instance, to form themselves into a company, under the Act of 1862, for the desired objects; and also for the express purpose of applying to Parliament for an Act, dissolving the company so formed, and establishing in its place another company for the like objects, but regulated by the "Companies Clauses Consolidation Act, 1845," and the Acts amending the same. The advantages of this mode of procedure are considerable. If promoters are not incorporated, there is room for much dispute and litigation as to their rights and liabilities *inter se*, especially if the application to Parliament is abortive; but if they are incorporated, the articles of association, and if necessary, specific agreements made with the preliminary company, determine all these matters.

Again, a company incorporated by Act of Parliament, is not bound by contracts made before its incorporation by its promoters, unless the Act confirms the agreements. But if the promoters have formed themselves into a preliminary company, such company can enter into all necessary contracts, *e.g.*, to purchase land, to pay compensation, to engage officers,

and so forth, and all these contracts will become binding on the Parliamentary company, because clauses are always inserted in an Act, which dissolves one company and establishes another in its place, transferring the contracts and liabilities of the former to the latter.

Objects.

The directors of the preliminary company will be given full powers to take all necessary proceedings, and the company can of course from time to time alter, vary, and control their powers and proceedings. For precedent of such an Act, see *infra*, "Reconstruction." Unless the application for the Act of reconstruction is made one of the objects, the company cannot apply any of its funds in promoting the bill, see further, *infra*, Articles of Association, Miscellaneous Clauses, Notes to Form 25.

6. To borrow money, &c. [*supra*, p. 105, No. 9].
7. To purchase, or otherwise acquire, and take over, all or any part of the property and liabilities of any other Waterworks company, carrying on business in the parishes of, &c.
8. To (accept bills, &c.) [*Ut supra*, p. 106, No. 10].
9. To invest, &c. [*Ut supra*, p. 108, No. 14].
10. To sell, &c. [*Ut supra*, p. 108, No. 17].
11. To do all, &c. [*General words, ut supra*, p. 108, No. 18].

II.

CHAMBER OF COMMERCE.

1. To promote and protect the home, colonial, and foreign trade and commerce, and the manufactures, of the United Kingdom, and in particular the trade, commerce, and manufactures, of the [borough] of ———. Chamber of Commerce.

Chambers of Commerce are being incorporated in considerable numbers as companies, limited by guarantee. See *supra*, p. 81.

The licence of the Board of Trade, under Section 23 of the Act of 1867 (*supra*, p. 101), is always obtained for registration without the word "Limited" as part of the name. For memorandum of association, see *supra*, p. 99. For suitable articles of association, see *infra*.

2. To consider all questions connected with such trade, commerce, and manufactures.
3. To promote or oppose legislative and other measures, affecting such trade, commerce, and manufactures.
4. To collect and circulate statistics, and other information, relating to such trade, commerce, and manufactures.
5. To act as arbitrator in the settlement of disputes arising out of commercial transactions.
6. To borrow any monies required for the purposes of the chamber upon such securities as may be determined.

Objects.

7. To purchase, &c. [*Ut supra*, p. 105, *No. 8, omitting the words in brackets.*]

8. To construct any buildings required for the purposes of the chamber.

9. To invest, &c. [*Ut supra*, p. 108, *No. 14.*]

10. To become a member or subscribe to any other association, whether incorporated or not, having objects altogether or in part similar to those of their chamber.

11. To sell, &c. [*Ut supra*, p. 108, *No. 17.*]

12. To do all, &c. [*Ut supra*, p. 108, *No. 18.*]

In the above form, the word "Chamber" will be used throughout, instead of "Company."

III.

SKATING RINK.

Skating Rink. 1. To establish a skating rink, at —, in the county of —.

2. To carry on the business of a skating rink proprietor.

3. To manufacture and sell roller and other skates.

4. To purchase, &c. [*Ut supra*, p. 105, *No. 8, concluding thus: "and in particular any lands, buildings, easements, patents, inventions, and licences."*]

5. To borrow, &c. [*Ut supra*, p. 105, *No. 9.*]

6. To [*accept bills, &c., ut supra*, p. 106, *No. 10.*]

7. To invest, &c. [*Ut supra*, p. 108, *No. 14.*]

8. To sell, &c. [*Ut supra*, p. 108, *No. 17.*]

9. To do all, &c. [*Ut supra*, p. 108, *No. 18.*]

IV.

LIFE ASSURANCE, ETC.

Life Assurance, etc.

1. To grant or effect assurances of every kind on the life or lives of any person or persons whomsoever, and on survivorships, and to make and effect all such other assurances connected with life or the non-existence or failure of issue, general or special, and on or in connection with any other contingency or contingencies, event or events, as may be

legally granted or effected. [For other Forms see *In re Empire Assurance Co.*, 4 Eq. 341.] Objects.

2. To grant or assure, life annuities, and deferred, or contingent, annuities of every description, and also endowments, marriage portions, for children and others, and any other deferred, or future, payments, provisions, and advances.

Before a company, intending to issue policies of assurance, or to grant annuities upon human life, within the United Kingdom, can be incorporated under the Act of 1862, a deposit of 20,000*l.* must be paid into Court. See 33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58: and 35 & 36 Vict. c. 41. See also Buckley, 625, *et seq.*, where also will be found the rules of the Board of Trade. Owing to these salutary enactments, comparatively few Life Assurance companies are now formed.

3. To acquire, by purchase or otherwise, life and other interests in real or personal property, whether in possession, reversion, remainder, or expectancy, and whether vested or contingent, absolute or defeasible, and whether the same or any of them are to take effect or to come into possession upon the said determination or dropping of any one or more life or lives, or on the expiration of any term or terms of years, or on any other event or events whatsoever.

4. To advance money by way of loan or security or otherwise, and generally to carry on and transact every kind of business which may be legally carried on and transacted by any life assurance, annuity, endowment, reversionary interest, and loan company.

This company, it will be observed, is not a Life Assurance company, pure and simple.

5. To purchase, &c. [*Ut supra*, p. 106, *No. 11*, taking the modified form.]

6. To purchase, &c. [*Ut supra*, p. 105, *No. 8*.]

7. To borrow, &c. [*Ut supra*, p. 105, *No. 9*.]

8. To [accept bills, &c., *ut supra*, p. 106, *No. 10*].

9. To invest, &c. [*Ut supra*, p. 108, *No. 14*.]

10. To [build, &c., *ut supra*, p. 108, *No. 15*].

11. To sell, &c. [*Ut supra*, p. 108, *No. 17*.]

12. To do all, &c. [*Ut supra*, p. 108, *No. 18*.]

Objects.

V.

DISCOUNT.

Discount
company.

1. To discount bills of exchange, promissory notes, and other negotiable instruments, and to make advances upon, and invest in, all kinds of securities, and generally to carry on the business of a bill discounter, bill broker, and money lender.

For other Forms, see *Oversond, Gurney, & Co. v. Gurney*, 4 Ch. 702; and *In re Barnard's Banking Co.*, 2 Ch. 674.

2. To purchase, &c. [*Ut supra*, p. 105, *No. 8.*]
3. To borrow, &c. [*Ut supra*, p. 105, *No. 9.*]
4. To [*accept bills, &c., ut supra*, p. 106, *No. 10.*]
5. To purchase, &c. [*Ut supra*, p. 106, *No. 11, taking the modified form.*]
6. To construct, &c. [*Ut supra*, p. 108.]
7. To sell, &c. [*Ut supra*, p. 108, *No. 17.*]
8. To do all, &c. [*Ut supra*, p. 108, *No. 18.*]

VI.

WAREHOUSEMEN.

Warehouse
company.

1. To carry on the trade or business of a wholesale warehouseman.

2. To manufacture, sell, deal, and trade in all goods, articles, and things usually dealt in by wholesale warehousemen.

3. To purchase all or any part of the business and property of The — Warehouse Company, Limited, and to undertake the liabilities and obligations of that company or any of them.

4. To purchase or otherwise acquire and undertake all or any part of the business, property, and liabilities of any other company or person carrying on any business included among the objects of this company; and to take, or otherwise acquire, and hold, shares in any such company.

5. To purchase, &c. [*Ut supra*, p. 105, *No. 8.*]
6. To construct, &c. [*Ut supra*, p. 108, *No. 15.*]
7. To borrow, &c. [*Ut supra*, p. 105, *No. 9.*]
8. To [*accept bills, &c., ut supra*, p. 106, *No. 10.*]

9. To invest, &c. [*Ut supra*, p. 108, *No. 14.*]
10. To sell, &c. [*Ut supra*, p. 108, *No. 17.*]
11. To do all, &c. [*Ut supra*, p. 108, *No. 18.*]

Objects.

VII.

FOREIGN MINING.

1. To purchase, or otherwise acquire, and work, mines, minerals, and mining rights, lands, hereditaments, and chat-tels in the state of —, in the United States of America, and in particular the land, minerals, and mining rights, known as The — Mine, situate near —, in the county of —, in the state of —, in the United States of America, with the mill, orehouses, and other buildings, erected on the said land, and the plant, machinery, stock, implements, and effects used in or about or belonging to the said mine, mill, orehouses, and other buildings, together with the business of the said mine and the goodwill thereof.

Foreign
mining
company.

2. To work the — Mine and any other mines of the company, and to crush, smelt, reduce, and amalgamate the ore, and render marketable the produce and develop the resources of the same mines, and to crush, smelt, reduce, and amalgamate the produce of any mines, whether belonging to the company or not.

3. To construct, or aid in and subscribe towards the construction, maintenance, and improvement of roads, tramways, railways, docks, piers, wharves, viaducts, aqueducts, flumes, ditches, quartz-mills, saw-mills, and other buildings and works which may be necessary or convenient for the purposes of the company.

4. To purchase, &c. [*Ut supra*, p. 105, *No. 8, adding some more items, as "vessels," "barges," and so forth.*]

5. To purchase, or otherwise acquire, and undertake, all or any part of the business, property, and liabilities of any other company engaged in mining or possessed of mining rights in the said state of —.

6. To borrow, &c. [*Ut supra*, p. 105, *No. 9.*]

7. To [*accept bills, &c., ut supra*, p. 106, *No. 10.*]

8. To invest, &c. [*Ut supra*, p. 108, *No. 14.*]

Objects.

9. To procure the company to be incorporated in the United States of America or elsewhere.

10. To do all, &c. [*General words, ut supra, p. 108, No. 18.*]

VIII.

OYSTER AND MUSSEL.

Oyster and
mussel fishery
company.

1. To acquire, establish, and maintain oyster and mussel fisheries in the estuary of, &c., or elsewhere off the coast of the county of —.

Under the "Sea Fisheries Act, 1868" (31 & 32 Vict. c. 45), the Board of Trade can make provisional orders for the establishment, improvement, maintenance, and regulation of oyster and mussel fisheries. For rules issued by the Board, and specimen provisional order, see *infra*.

2. To form oyster and mussel beds, and to stock, cultivate, and improve the same, and for that purpose to purchase, dredge, relay, propagate, and fatten oysters and mussels.

3. To work, dredge, and develop the said fisheries, and to sell the produce thereof, and generally to carry on the business of a proprietor of oyster and mussel fisheries.

4. To purchase, &c. [*Ut supra, p. 105, No. 8.*]

5. To obtain any provisional order of the Board of Trade, or Act of Parliament, for enabling the company to carry its objects into effect.

6. To borrow, &c. [*Ut supra, p. 105, No. 9.*]

7. To [*accept bills, &c., ut supra, p. 106, No. 10.*]

8. To build, &c. [*Ut supra, p. 108, No. 15.*]

9. To sell, &c. [*Ut supra, p. 108, No. 17.*]

10. To do all, &c. [*Ut supra, p. 108, No. 18.*]

IX.

LAND.

Land
company.

1. To carry on all or any of the businesses usually carried on by Land Companies, in all their several branches, and in particular to lay out and improve, alter, and develop, by draining, clearing, road-making, or otherwise, any property of the company, and thereon to erect and construct, or assist in

the erection or construction of, any buildings or works Objects.
 whatsoever, and to pull down, alter, and rebuild any existing
 erections or buildings acquired by the company.

2. To purchase, &c. [*Ut supra*, p. 105, *No. 8.*]
3. To borrow, &c. [*Ut supra*, p. 105, *No. 9.*]
4. To [*accept bills, &c., ut supra*, p. 106, *No. 10.*]
5. To advance money by way of loan upon any securities
 real or personal.
6. To receive money on deposit, &c. [*Ut supra*, p. 108,
No. 16.]
7. To sell, &c. [*Ut supra*, p. 108, *No. 17.*]
8. To do all, &c. [*Ut supra*, p. 108, *No. 18.*]

X.

MARINE INSURANCE.

1. To insure against every description of marine insurance Marine
 risk, which may be legally undertaken, relating to perils of the insurance.
 seas, fire, men of war, reprisals, and all other risks of like
 nature incidental to the seas, ships, vessels, and craft of all
 descriptions, and also the freights, goods, merchandise, cargo,
 earnings, and property in or on board the same, whether the
 property of members of the company or not, so far as the
 same may be effected or made according to law ; and also to
 insure all other matters and things which lawfully may or can,
 from time to time, be insured, or be the subject of insurance,
 against the perils of the sea ; and generally to carry on
 marine insurance in all its branches.

2. To purchase, or otherwise acquire, all or any part of the
 business, property, and liabilities of any other company carrying
 on any business which this company may carry on, and
 generally to purchase, take on lease, hire, or otherwise acquire
 any real or personal property which may be convenient or
 necessary for the purposes of the company.

3. To borrow, &c. [*Ut supra*, p. 105, *No. 9.*]
4. To [*accept bills, &c., ut supra*, p. 106, *No. 10.*]
5. To invest, &c. [*Ut supra*, p. 108, *No. 14.*]
6. To sell, &c. [*Ut supra*, p. 108, *No. 17.*]
7. To do all, &c. [*Ut supra*, p. 108, *No. 18.*]

Objects.

XI.

MEDICAL INSTITUTE.

Medical
institute.

1. To establish and maintain at —, in the county of —, a library of works relating to the medical and allied sciences.
2. To advance and encourage professional knowledge, study, and research, by the establishment and maintenance of physiological and pathological laboratories and museums, the delivery of lectures, the giving of prizes and rewards, and by such other means as may be thought expedient.
3. To relieve poor and necessitous members of the medical profession, who may, through bodily or mental infirmity, or other misfortune, be incapacitated for practice, and also the wives and families of such persons.
4. To relieve poor and necessitous widows, children, and other relations of deceased members of the institute.
5. To construct, alter, and maintain any buildings necessary or convenient for the purposes of the society.
6. To invest, &c. [*Ut supra*, p. 108, No. 14.]
7. To borrow money, &c. [*Ut supra*, p. 111, paragraph 6.]
8. To purchase, &c. [*Ut supra*, p. 105, No. 8, omitting words in brackets.]
9. To sell, &c. [*Ut supra*, p. 108, No. 17.]
10. To do all, &c. [*Ut supra*, p. 108, No. 18.]

A society with such objects as above, may be registered pursuant to Section 23 of the Act of 1867. See *supra*, pp. 81, 99. The articles, *infra*, Precedent III., can be easily adapted. The society would be limited by guarantee. See *supra*, p. 87.

XII.

BANKING.

Banking.

1. To carry on the business of banking in all its branches, and in particular to advance money upon property and securities of all kinds, to discount bills, notes, and other securities, to deal in exchanges and specie, and to receive money on deposit at interest or otherwise.

For other Forms, see *Royal Bank of India's Case*, 4 Ch. 252; and *Zulueta's Case*, 5 Ch. 445.

2. To purchase, &c. [*Ut supra*, p. 106, No. 11.]

3. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]
4. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]
5. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].
6. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
7. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
8. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

Objects.

XIII.

FOREIGN LAND AND COLONISATION.

1. To purchase, or otherwise acquire, settle, improve, and cultivate lands and hereditaments in the territory of —, and elsewhere in —. Foreign land
and colonisa-
tion.
2. To develop the resources of the same lands and hereditaments by building, planting, clearing, mining, and otherwise dealing with the same.
3. To stock the same lands, and to breed and deal in all kinds of stock, cattle, sheep, and produce.
4. To aid, encourage, and promote immigration into the property of the company; and to colonise the same; and for the purposes aforesaid to lend and grant any sums of money.
5. To buy, manufacture, and sell all kinds of goods, chattels, and effects required by the company or by any persons who may settle on the property of the company or by others.
6. To make, provide, and carry on, use and work railways, tramways, telegraph lines, canals, reservoirs, wells, aqueducts, roads, streets, gasworks, piers, wharves, and other works which may be deemed expedient for the purposes of the company, and to contribute to the cost of making, providing, carrying on, and working the same.
7. To promote any other company for carrying into effect any of the objects of this company, and to take, or otherwise acquire, and hold, shares in any such company, and generally in any company the business of which is capable of being conducted so as directly or indirectly to benefit this company.
8. To lend money with or without security.
9. To guarantee the performance of any contract or obligation.
10. To carry on the business of a banker in all its branches.
11. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

Objects.

12. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]
13. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
14. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XIV.

PIER.

Pier. 1. To erect and maintain a pier at or near —, in the county of —.

Piers are being erected in considerable numbers. The requisite permission and powers can be obtained at a small expense from the Board of Trade. For specimen provisional order of the Board, under the "General Pier and Harbour Act, 1861," and rules as to applications, and extracts from the Act, see *infra*, "Provisional Orders."

2. To erect all such buildings and conveniences * in connection with the said pier as may be deemed expedient.

* As to this word, see *Attorney-General v. Mayor, &c., of Cambridge*, L. R. 6 H. L. 316.

3. To charge and levy tolls and fees for the uses of the said pier.

4. To obtain any provisional order of the Board of Trade, or any Act of Parliament, to enable the company to carry its objects or any of them into effect.

5. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

6. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

7. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

8. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

9. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]

10. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XV.

LAW SOCIETY.

Law society. 1. To support and protect the character, status, and interests of solicitors practising within twenty miles of the Town Hall at N. ; to promote honourable practice ; to suppress malpractice ; to settle disputed points of practice ; to decide all ques-

tions of usage or courtesy in conducting legal business of all kinds. Objects.

Law societies are frequently registered as companies, limited by guarantee. See *supra*, p. 81. The licence of the Board of Trade is readily obtained on the usual conditions for registration without the word "Limited" as part of the name. See *supra*, p. 101. For articles of association, see *infra*. The guarantee is usually 5*l.* or 10*l.*

2. To consider, originate, and promote improvements in the law ; to consider alterations in the law, and oppose or support the same ; to effect improvements in administration and practice ; for the purposes aforesaid to petition Parliament and take such other steps and proceedings as may be deemed expedient.

3. To encourage the study of law by articled clerks of solicitors, and with a view thereto to give prizes and rewards.

4. To form and maintain a law library at —.

5. To erect any buildings required for the purposes of the society.

6. To borrow, &c. [*Ut supra*, p. 111, Form II., paragraph 6.]

7. To become a member, &c. [*Ut supra*, p. 112, paragraph 10.]

8. To purchase, &c. [*Ut supra*, p. 105, No. 8, omitting words in brackets.]

9. To invest, &c. [*Ut supra*, p. 108, No. 14.]

10. To sell, &c. [*Ut supra*, p. 108, No. 17.]

11. To do all, &c. [*Ut supra*, p. 108, No. 17.]

XVI.

AUCTIONEER AND COMMISSION AGENT, ETC.

1. To carry on the businesses of an auctioneer, a commission agent, and an estate agent in all or any of their respective branches. Auctioneer, commission and estate agent company.

2. To purchase, sell, barter, and otherwise deal in pictures, furniture, plate, jewellery, and works of art or *vertu*.

3. To advance money by way of loan upon property of all kinds.

4. [To receive money on deposit ?]

5. To purchase, &c. [*businesses, ut supra*, p. 106, No. 11,

Objects. *concluding thus* : and to take or otherwise acquire, and hold shares in any such company].

6. To purchase, take or lease, or in exchange, hire, or otherwise acquire, any real and personal property, and any rights or privileges, necessary or convenient for the purposes of the company.

7. To construct, erect, alter, and maintain any buildings and works convenient for the purposes of the company.

8. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

9. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

10. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

11. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]

12. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XVII.

SUGAR WORKS.

Sugar works,
&c.

1. To purchase the — Sugar Works, carried on at —, in the Presidency of —, in India, together with the lands, buildings, machinery and plant, belonging to or employed in connection with the said Sugar Works.

2. To carry on the business or trade of a sugar manufacturer and refiner.

3. To purchase sugar, rum, and other produce, in the neighbourhood of the said works.

4. To [*build, &c., ut supra*, p. 108, *No.* 15].

5. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

6. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

7. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

8. To purchase, &c. [*Ut supra*, p. 106, *No.* 11.]

9. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

10. To sell, export, &c. [*Ut supra*, p. 108, *No.* 17.]

11. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XVIII.

WAGGON WORKS.

Waggon
works, &c.,
company.

1. To purchase, or otherwise acquire, the manufactory known as The — Waggon Works, at —, and the goodwill

of the business now carried on there by —, and the stock-in-trade, plant, machinery, chattels and effects, belonging to the said works, and the benefit of all contracts in connection therewith.

Objects.

2. To carry on the said business, and generally to carry on the business of a Waggon Works company in all its branches, and to manufacture, maintain, and sell railway-waggons, trucks, carriages, locomotives, rolling-stock, engines, plant, machinery, appliances, and implements of all kinds.

3. Also to carry on the following businesses, namely, those of a manufacturer of machinery, an engineer, an iron-founder, and a manufacturer, worker, and dealer in all kinds of metals.

4. To [*build, &c., ut supra*, p. 108, *No. 15*].
5. To purchase, &c. [*Ut supra*, p. 105, *No. 8*.]
6. To borrow, &c. [*Ut supra*, p. 105, *No. 9*.]
7. To [*accept bills, &c., ut supra*, p. 106, *No. 10*].
8. To sell, &c. [*Ut supra*, p. 108, *No. 17*.]
9. To do all, &c. [*Ut supra*, p. 108, *No. 18*.]

XIX.

TRAMWAYS.

1. To make, work, and maintain the following tramways :— Tramways.

(a.) A tramway from, &c. to, &c.

(b.) [Ditto.]

(c.) [Ditto.]

And such other tramways in the county of —, [or elsewhere,] as may be determined on.

2. To purchase, &c. [*Ut supra*, p. 105, *No. 8, altered thus* : and in particular any lands, buildings, easements, plant, machinery, carriages, horses, and locomotives.]

3. To manufacture and maintain tramway carriages and other chattels and things used by the company for the purposes of its undertaking.

4. To obtain any provisional order of the Board of Trade or Act of Parliament for enabling the company to carry its objects, or any of them, into effect.

For specimen provisional order of Board of Trade, with rules as to applications, &c., see *infra*, "Provisional Orders."

5. To borrow, &c. [*Ut supra*, p. 105, *No. 9*.]

Objects.

6. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].
7. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
- 8 To [*build, &c., ut supra*, p. 108, *No.* 15].
9. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
10. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XX.

PAROCHIAL INSTITUTE.

Parochial
institute.

1. To establish a library and reading-rooms at —, in the county of —, and to provide a large hall or room for entertainments, lectures, and meetings.

This institute is within the meaning of Section 23 of the Act of 1867, and the Board of Trade will accordingly, on the usual conditions, grant a licence for registration, without the word "Limited" as part of the name. The liability should be limited by guarantee. See further, *supra*, p. 101, *et seq.*

2. To promote mental culture, and to encourage habits of temperance, industry, and application, and with a view thereto, among other things, to offer and give prizes and rewards.

3. To purchase, hire, or otherwise acquire, for the purposes of the institute, any real or personal property, and in particular any land, buildings, furniture, books, newspapers, periodicals, and musical instruments.

4. To invest the monies of the institute, not immediately required, in such manner as may be determined.

5. To accept and hold any money or property upon trust for any charitable purposes for the benefit of the inhabitants of the parish of —, or any class or section thereof, and to execute such trusts.

6. To borrow, &c. [*Ut supra*, p. 105, *paragraph* 6.]
7. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
8. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
9. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXI.

FIRE INSURANCE.

Fire insurance
company.

1. To insure against loss or damage by fire, storm, or acci-

dent, buildings, chattels, and effects, and real and personal Objects.
property of all kinds.

2. To purchase, and undertake, all or any part of the business, property, and liabilities, of any other Insurance company, whose objects shall be altogether or in part similar to those of this company.

3. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

4. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

5. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

6. To construct any buildings necessary or convenient for the purposes of the company.

7. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

8. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]

9. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXII.

CO-OPERATIVE STORE.

1. To carry on the business of a co-operative society in all its branches. Co-operative
society.

2. To buy and sell goods, stores, consumable articles, chattels, and effects of all kinds, both wholesale and retail.

3. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

4. To receive money on deposit at interest or otherwise.

[See *supra*, p. 108, *No.* 16.]

5. To borrow money, &c. [*Ut supra*, p. 105, *No.* 9.]

6. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

7. To purchase, &c. [*Ut supra*, p. 106, *No.* 11.]

8. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

9. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]

10. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXIII.

HOTEL.

1. To establish a hotel or hotels at —, in the county of —, and elsewhere, as may be determined. Hotel
company.

2. To carry on the businesses of a hotel and tavern keeper, a lodging-house keeper, a wine and spirit merchant, and a livery-stable keeper.

Objects.

3. To [*build, &c., ut supra*, p. 108, *No.* 15].
4. To purchase, &c. [*Ut supra*, p. 106, *No.* 11.]
5. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]
6. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]
7. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].
8. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
9. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
10. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXIV.

FOREIGN RAILWAY.

Railway,
foreign.

1. To acquire the benefit of a concession, granted by the Republic of —, to —, for the construction of a railway from —, to —.

2. To construct, maintain, and work the railway authorised by the said concession, and any other railways in the Republic of —, which the company may be authorised to construct.

3. To construct, or contribute to the cost of constructing, any docks, wharves, warehouses, telegraphs, buildings, or works requisite or convenient for the purposes of the company, or calculated to promote the interests thereof.

4. To charter, purchase, and employ, vessels in connection with any railway of the company.

5. To purchase, manufacture, maintain, and hire, plant, stores, machinery, rolling-stock, and other property convenient for the purposes of the company.

6. To convey passengers, merchandise, goods, and chattels, upon the railways, or in the vessels of the company; to take and levy tolls, rates, and charges, and generally to carry on the business of a railway company and a telegraph company in all their respective branches.

7. To enter into contracts with other companies, as to running powers, interchange of traffic, or otherwise, in relation to the development of the property of the company.

8. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

9. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

10. To [*accept, &c., ut supra*, p. 106, *No.* 10].

11. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

12. To procure the company to be incorporated in the said Objects.
Republic of —.

13. To take [*shares, &c., ut supra*, p. 107, *No. 12*].

14. To promote, &c. [*Ut supra*, p. 107, *No. 13*.]

15. To sell, &c. [*Ut supra*, p. 108, *No. 17*.]

16. To do all, &c. [*Ut supra*, p. 108, *No. 18*.]

For another Form, see *Mills v. The Northern Ry. of Buenos Ayres Co.*,
5 Ch. 622.

XXV.

COAL AND IRON.

1. To carry on the trades or businesses of iron masters, colliery proprietors, coke manufacturers, miners, smelters, engineers, steel converters, and ironfounders, in all their respective branches. Coal and iron company.

2. To search for, get, work, raise, make merchantable, sell, and deal in, iron, coal, ironstone, brick-earth, bricks, and other metals, minerals, and substances, and to manufacture, and sell, patent fuel.

3. To construct, maintain, and improve, any water-works, gas-works, ponds, reservoirs, water-courses, railways, tramways, wharves, piers, docks, canals, and other buildings and works, calculated directly or indirectly to advance the interests of the company; and to contribute to the expense of constructing, maintaining, and improving, any such works.

4. To purchase, &c. [*Ut supra*, p. 105, *No. 8, concluding thus*: and in particular any lands, buildings, works, collieries, coal-mines, iron and other mines, minerals, casements, machinery, vessels, and rolling-stock.]

5. To purchase, &c. [*Ut supra*, p. 106, *No. 11*.]

6. To take [*shares, &c., ut supra*, p. 107, *No. 12*].

7. To promote, &c. [*Ut supra*, p. 107, *No. 13*.]

8. To invest, &c. [*Ut supra*, p. 108, *No. 14*.]

9. To borrow, &c. [*Ut supra*, p. 105, *No. 9*.]

10. To sell, &c. [*Ut supra*, p. 108, *No. 17*.]

11. To do all, &c. [*Ut supra*, p. 108, *No. 18*.]

Objects.

XXVI.

MUTUAL TRADE PROTECTION.

Trade
protection.

1. To protect the members of the society against fraudulent dealings, and against bankruptcies and insolvencies arising from fraud, culpable negligence or extravagances, by such means as may be deemed expedient.

Such societies as this have been treated as within the meaning of Section 23 of the Act of 1867, and the Board of Trade has accordingly, on the usual conditions, granted licences for registration without the word "Limited" as part of the name. See *supra*, pp. 81, 101.

The articles, *infra*, Precedents III. and IV., can be readily adapted.

Such societies are usually limited by guarantee, say, 1*l*. or 5*l*. per member.

2. To diffuse information as to sound principles of trading, and to impress upon the mercantile community the necessity of maintaining an intimate knowledge of the state of their affairs by periodical investigations and by keeping correct sets of business books.

3. To procure information for members as to the standing and responsibility of parties with whom they propose to transact business.

4. To collect debts for members upon such terms as may be determined.

5. To communicate with Chambers of Commerce and other mercantile and public bodies throughout the United Kingdom, and concert and promote measures for the protection of trade and traders.

6. To consider, originate, and support improvements in the commercial laws.

7. To subscribe to, become a member of, and co-operate with any other association, whether incorporated or not, whose objects are altogether or in part similar to those of this society, and to procure from and communicate to any such association such information as may be likely to forward the object of the society.

8. To borrow, &c. [*Ut supra*, Form II., paragraph 6.]

9. To purchase, &c. [*Ut supra*, p. 118.]

10. To invest, &c. [*Ut supra*, p. 108, No. 14.]

11. To sell, &c. [*Ut supra*, p. 108, No. 17.]

12. To do all, &c. [*Ut supra*, p. 108, No. 18.]

XXVII.

Objects.

SHIPBUILDING.

1. To build, equip, and repair ships and vessels of all kinds ; and to manufacture and repair steam-engines, boilers, and machinery, and other appliances and things used in or about or for the purposes of shipbuilding. Iron ship building.
2. To carry on the business of shipbuilding in all its branches.
3. To construct and maintain buildings, manufactories, and works, and to excavate and form graving and other docks.
4. To acquire, by purchase or otherwise, lands, yards, buildings, quays, ships, vessels, plant and machinery, and generally any real and personal property for the purposes of the company.
5. To advance money on loan, with or without security.
6. To purchase, &c. [*Ut supra*, p. 106, *No.* 11.]
7. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]
8. To take [*shares, &c., ut supra*, p. 107, *No.* 12.]
9. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
10. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]
11. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].
12. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
13. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXVIII.

CONTRACT AND FINANCIAL.

1. To negotiate loans of all kinds.
2. To take concessions of, or lease, railways or other undertakings, whether British or foreign, and either construct or otherwise carry out the same itself, or make them over wholly or partly to other companies or persons. Contract and financial.
3. To work railways and other undertakings, British and foreign.
4. To take contracts, British or foreign, and execute them either itself or by letting them to subcontractors, also to become surety for the due execution by any contractors of the works, whether British or foreign, contracted for by them,

Objects. and to indemnify any person or persons who may be nominated by the company to undertake any such suretyship.

5. To buy and sell on its own account, or for a commission, all kinds of property, real and personal, movable and immovable, and to manage, develop, mortgage, sell, dispose of, or otherwise deal with, all or any part of the property of the company, as may seem expedient.

6. To take, or otherwise acquire, shares in any other company.

7. To make advances on stock, shares, or other securities, and on property of all kinds, either with or without the borrower's personal security.

8. To accept, indorse, and make bills of exchange, promissory notes, and other negotiable instruments.

9. To receive money on deposit, at interest or otherwise.

10. Generally to transact any business of a merchant or capitalist, either as principal or agent.

11. To purchase, or otherwise acquire, from any company, partnership, or person, any business included among the objects of this company, or any property connected with any such business.

12. To promote other companies for the purpose of acquiring any of the rights, property, or liabilities of this company.

13. To give such guarantee in relation to the shares, stock, or obligations of any other company as may be determined, and generally to guarantee the performance of any contract.

14. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

15. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXIX.

SPINNING.

Spinning
company.

1. To purchase, prepare, spin, manufacture, and deal in cotton yarn and other fibrous products and materials, and to carry on the business of spinning, bleaching, dyeing, printing and finishing cotton and other goods of the like kind.

2. To purchase and undertake, on such terms and conditions as may be arranged, all or any part of the assets and liabilities of any company, firm, or person engaged in any business within the objects of this company, and in particular to pur-

chase and undertake the business now carried on by Messrs. —, cotton spinners, at the — mills, in the county of —, and all or any part of the property and liabilities of the said firm in connection therewith.

Objects.

3. To [*build, &c., ut supra*, p. 108, *No. 15*].
4. To purchase, &c. [*Ut supra*, p. 105, *No. 8*.]
5. To borrow money, &c. [*Ut supra*, p. 105, *No. 9*.]
6. To [*accept bills, &c., ut supra*, p. 106, *No. 10*].
7. To invest, &c. [*Ut supra*, p. 108, *No. 14*.]
8. To sell, &c. [*Ut supra*, p. 108, *No. 17*.]
9. To do all, &c. [*Ut supra*, p. 108, *No. 18*.]

XXX.**GAS-WORKS.**

1. To manufacture, sell, and supply gas in the town of —, and elsewhere in the parishes of, &c., in the county of — ; and to carry on the business of a Gas-works company in all its branches.

Gas-works
company.

2. To deal with, manufacture, and render saleable coke, coal-tar, pitch, asphaltum, ammoniacal liquor and other residual products obtained in the manufacture of gas.

3. To construct, manufacture, and maintain works for holding, receiving, and purifying gas, and all other buildings and works, meters, pipes, fittings, machinery, apparatus, and appliances convenient or necessary for the purposes of the company.

A Gas-works company requires statutory powers, and these can in many cases be readily obtained by provisional order of the Board of Trade. See specimen order, extracts from Gas and Water Facilities Acts, and rules of Board of Trade as to applications; see *infra*, "Provisional Orders."

4. To purchase, &c. [*Ut supra*, p. 105, *No. 8, concluding thus*: and in particular any lands, buildings, quarries, collieries, easements, plant, machinery, barges, waggons, and other chattels.]

5. To obtain any provisional order of the Board of Trade or Act of Parliament which may be deemed requisite for the purposes of the company.

6. To borrow, &c. [*Ut supra*, p. 105, *No. 9*.]

7. To [*accept bills, &c., ut supra*, p. 106, *No. 10*].

Objects.

8. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
9. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
10. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXXI.

SHIPOWNER.

Shipowners.

1. To purchase, build, charter, equip, load on commission, sail, repair, let out to hire and trade with, steam or other ships, boats and vessels of all kinds.
2. To advance money on loan with or without security.
3. To purchase coal, timber, and other merchandise or produce, for the purpose of freighting any vessels belonging to or in which the company is interested.
4. To carry on the business of a shipowner in all its branches.
5. To [*build, &c., ut supra*, p. 108, *No.* 15].
6. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]
7. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]
8. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].
9. To take shares, &c. [*Ut supra*, p. 107, *No.* 12.]
10. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]
11. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]
12. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXXII.

AQUARIUM.

Aquarium.

1. To establish and maintain at —, in the county of —, a marine aquarium with a restaurant and other buildings and conveniences in connection therewith.
2. To provide exhibitions, concerts, lectures, and such other entertainments and amusements as may be deemed expedient.
3. To carry on the business of a restaurant proprietor, and for that purpose to buy and sell comestibles, wine, spirits, and beverages of all kinds.
4. To [*build, &c., ut supra*, p. 108, *No.* 15].
5. To purchase, &c. [*Ut supra*, p. 105, *No.* 8, concluding thus: and in particular any lands, buildings, easements, ma-

cninery, plants, books, stationery, pictures, and musical instruments.] Objects.

6. To obtain any Act of Parliament for effectuating the objects of the company or any of them.

7. To borrow, &c. [*Ut supra*, p. 105, No. 9.]

8. To [*accept bills, &c., ut supra*, p. 106, No. 10].

9. To invest, &c. [*Ut supra*, p. 107, No. 15.]

10. To sell, &c. [*Ut supra*, p. 108, No. 17.]

11. To do all, &c. [*Ut supra*, p. 108, No. 18.]

XXXIII.

ACCIDENT INSURANCE.

1. To insure against death, or injury to health or limb, by accident or misadventure of any kind. A cident insurance company.

Query whether such a company is not a life assurance company within the Acts mentioned (*supra*, p. 113, note to paragraph 2). The Registrar holds that it is not, and accordingly will register without requiring the deposit of 20,000*l.* to be made.

2. To assure payment during sickness or incapacity arising from any such accident or misadventure as aforesaid.

3. To purchase, or otherwise acquire, and undertake, all or any part of the business, property, and liabilities, of any other company whose objects shall be altogether or in part similar to those of this company, and to take, or otherwise acquire, and hold, shares in any such company.

4. To purchase, &c. [*Ut supra*, p. 105, No. 8.]

5. To borrow, &c. [*Ut supra*, p. 105, No. 9.]

6. To accept, &c. [*Ut supra*, p. 106, No. 10.]

7. To construct, &c. [*Ut supra*, p. 108.]

8. To invest, &c. [*Ut supra*, p. 108, No. 14.]

9. To sell, &c. [*Ut supra*, p. 108, No. 17.]

10. To do all, &c. [*Ut supra*, p. 108, No. 18.]

XXXIV.

GUARANTEE.

1. To carry on the business of a guarantee company in all Guarantee company.

Objects. its branches, and, in particular, to issue policies guaranteeing the fidelity of persons filling or about to fill situations of trust or confidence, and to guarantee the payment of rents, and the performance of contracts of all kinds.

2. To purchase and undertake all or any part of the business, property, and liabilities, of any other guarantee company.

3. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

4. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

5. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

6. To construct, &c. [*Ut supra*, p. 112, *paragraph* 6.]

7. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

8. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]

9. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXXV.

PATENTS.

Patents
company.

1. To purchase the following patents, or any of them, namely, &c.

and any improvements on the several inventions specified in the said letters patent respectively.

2. To do all such things as may be deemed expedient for obtaining the full benefit of the patents and inventions for the time being belonging to the company, or in which it is interested, with full power to grant licences, and to manufacture, sell, and let, apparatus for the application of the said inventions.

3. To [*build, &c., ut supra*, p. 108, *No.* 15].

4. To purchase, &c. [*Ut supra*, p. 105, *No.* 8.]

5. To borrow, &c. [*Ut supra*, p. 105, *No.* 9.]

6. To [*accept bills, &c., ut supra*, p. 106, *No.* 10].

7. To invest, &c. [*Ut supra*, p. 108, *No.* 14.]

8. To sell, &c. [*Ut supra*, p. 108, *No.* 17.]

9. To do all, &c. [*Ut supra*, p. 108, *No.* 18.]

XXXVI.

PUBLIC HALL.

Public Hall
company.

1. To erect at —, in the county of —, suitable build-

ings to be used for public meetings, concerts, assemblies, and the like, also as a corn exchange, and for such other purposes as may be determined; and to erect offices, shops, warehouses, and refreshment rooms, under, or adjoining, or in connection with, the said buildings. Objects.

2. To purchase, &c. [*Ut supra*, p. 105, No. 8.]
3. To borrow, &c. [*Ut supra*, p. 105, No. 9.]
4. To accept, &c. [*Ut supra*, p. 106, No. 10.]
5. To invest, &c. [*Ut supra*, p. 108, No. 14.]
6. To sell, &c. [*Ut supra*, p. 108, No. 17.]
7. To do all, &c. [*Ut supra*, p. 108, No. 18.]

XXXVII.

MUTUAL MARINE INSURANCE.

1. To insure upon the mutual principle against every description of marine risk which may be lawfully undertaken, ships, vessels, and craft of all kinds, in which the members of the company are interested as owners, managing-owners, mortgagees, agents, or otherwise. Mutual ship insurance company.

2. To borrow money upon such securities as may be determined.

3. To purchase, take on lease, hire, or otherwise acquire, any real or personal property necessary or convenient for the purposes of the company.

3. To [*accept bills, &c. ut supra*, p. 106, No. 10].

4. To invest, &c. [*Ut supra*, p. 108, No. 14.]

5. To sell, &c. [*Ut supra*, p. 108, No. 17.]

6. To do all, &c. [*Ut supra*, p. 108, No. 18.]

It was formerly thought that mutual insurance societies were not to be considered as formed with a view to gain, so as to require, if consisting of more than twenty members, to be registered under the Act of 1862. See Section 4 of the Act. Buckley, p. 3; Arnould on Marine Insurance, 4th ed., Vol. I., p. 140. But in the recent case of *Ex parte Hargrove & Co.*, 10 Ch. 542, the Master of the Rolls decided that a mutual insurance society, the rules of which, so far as material to the question, were in the ordinary form, was within Section 4 of the Act, and not having been registered was an illegal association. Since this decision, nearly 100 mutual insurance societies have been registered. Their objects, for the most part, are the insurance of vessels or freight. In most cases only a particular class of vessels is insured, *e.g.*, iron steamships, or vessels of not less than 1000 tons burden, or vessels engaged in

Objects. a particular trade, *e.g.*, the coal trade. The mutual system is sometimes applied in other cases, *e.g.*, to the insurance of cattle. There will be found, *infra*, a form of articles for a mutual insurance company (iron steamships) having unlimited liability. It can readily be adapted to the case of a company limited by guarantee, and it seems more prudent to limit the liability. Nevertheless, such societies very commonly register with unlimited liability. Perhaps the reason in some cases is the objection to tacking the word "Limited" to the name.

Of course the rules of such societies vary considerably in detail.

If it is desired to insure vessels of several classes, and also freight, &c., it will be found best to form a separate company for each class, and not, as is sometimes done, to create several clubs within one company.

MISCELLANEOUS FORMS.

Forms. Some of the following Forms are occasionally inserted in the objects clause of memoranda :—

1. To acquire by grant, purchase, or otherwise, concessions of any rights, property, or privileges from any government, British, colonial, or foreign, and to perform and fulfil the terms and conditions thereof.

2. To receive monies on deposit at interest or otherwise.

3. To promote and form other companies for all or any of the objects mentioned in this memorandum, and to transfer to any such company any property of the company, and to take or otherwise acquire and hold shares, debentures, or other securities in or of any such company, and to subsidise or otherwise assist any such company.

4. To promote or establish any new companies for commercial, trading, manufacturing, engineering, mining, or financial purposes, either in the United Kingdom or elsewhere, and to take or otherwise acquire and hold the shares, stock, debentures, or other securities in or of any such company.

5. To transact, on commission, the general business of a land agent.

6. To transact any business of a merchant or capitalist, either as principal or agent.

Forms.

7. To transact every description of banking, discount, exchange, commercial, mercantile, and financial business.

8. To issue, on commission or otherwise, and to subscribe for and take, acquire and hold shares, stocks, bonds, obligations, debentures, and securities of any other company.

9. To conduct and manage the business and affairs of any other companies or persons, whether such businesses be commercial, financial, or otherwise.

10. To make advances on stock, shares, or other securities, and on property of all kinds, either with or without the borrower's personal security.

11. To negotiate loans, manage properties, collect and receive rents, and transact all manner of agency and commission business.

12. To buy and sell, on its own account or otherwise, all kinds of property, real or personal, movable or immovable.

13. To enter into arrangements, under the Act 28 & 29 Vict. c. 86, for sharing profits with any person, partnership, or company carrying on any financial, commercial, or other business.

14. To lend and invest money, whether belonging or entrusted to this company.

15. To give such guarantees in relation to the shares, stocks, or obligations of any company as may be determined.

16. To guarantee the performance of any contracts or obligations.

17. To re-issue any stocks, shares, debentures, or other securities, with or without the guarantee of the company.

18. To secure, by guarantee or otherwise, the repayment of monies invested on securities, whether such investments be made through the agency of this company or not.

19. To guarantee the payment of interest on monies so invested.

20. To procure the company to be registered or incorporated in any colony or foreign state.

Forms.

21. To accept property on trust and to act as trustee and executor.

22. To do all the matters hereinbefore mentioned, in any part of the world, and either upon the sole account of the company, or as agent or factor of, or partner with, any other company, society, or person.

ARTICLES OF ASSOCIATION.

INTRODUCTORY NOTES.

THE Act provides that the memorandum of association may, Articles.
in the case of a company limited by shares, and shall in the
case of a company limited by guarantee, or unlimited, be
accompanied, when registered, by articles of association signed
by the subscribers to the memorandum of association, and
prescribing such regulations for the company as the subscribers
to the memorandum of association deem expedient. Section 14
of the Act.

The articles are to be expressed in separate paragraphs,
numbered arithmetically. *Ibid.*

They may adopt all or any of the provisions contained in May adopt
Table A.
the Table marked A. in the first schedule to the Act. *Ibid.*,
see *infra*, Precedent II.

In the case of a company, whether limited by guarantee or
unlimited, that has a capital divided into shares, they must
state the amount of capital with which the company pro-
poses to be registered. *Ibid.*, Section 14 of the Act.

And in the case of a company, whether limited by guarantee
or unlimited, that has not a capital divided into shares, they
must state the number of members with which the company
proposes to be registered, for the purpose of enabling the
registrar to determine the fees payable on registration. *Ibid.*,
see *infra*, Precedents III., IV., and V.

In a company limited by guarantee or unlimited, and having
a capital divided into shares, each subscriber is to take one
share at the least, and is to write opposite his name in the
memorandum [?] of association [see *supra*, p. 89.] the number
of shares he takes. Section 14 of the Act.

Section 15 of the Act provides, that in the case of a company When Table
A. to apply.
limited by shares, if the memorandum of association is not ac-
companied by articles of association, or in so far as the articles
do not exclude or modify the regulations contained in the Table
marked A. in the first schedule to the Act, the last mentioned

regulations are, so far as the same are applicable, to be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

The great majority of companies, formed under the Act, are registered as companies limited by shares, and it appears from Sections 14 and 15 above mentioned, that as regards such companies articles of association may be registered with the memorandum, but if not that Table A. will apply.

In some cases
no articles
registered.

In a considerable number of cases no articles are registered, and Table A. accordingly applies.

It is also by no means uncommon to exercise the power contained in Section 15 by registering articles which adopt Table A. with some modifications. See *infra*, Precedent II., for an example.

Advantage of
articles.

However it is generally admitted that the additional expense, and it is but small, of preparing and registering a full set of articles is amply recompensed by the possession of a complete code of regulations.

Articles to be
printed.
Stamp.

The Act also provides that the articles of association shall be printed; they are to bear the same stamp as if they were contained in a deed, *i.e.*, a 10*s.* stamp, and are to be signed by each subscriber in the presence of, and to be attested by, one witness at the least. Section 16 of the Act.

Effect of
articles.

When registered, they are to bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of the Act. *Ibid.*

Monies pay-
able to com-
pany by regu-
lations to be a
debt.

And all monies payable by any member to the company, in pursuance of the conditions or regulations of the company, or any of such conditions and regulations of the company, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt. *Ibid.*, see further, *infra*, p. 145.

Effect of re-
gistration.

As to the effect of registering the memorandum and articles, and of the issue by the registrar of the certificate of incorporation, see *supra*, p. 74.

As to the liability of present and past members to contribute in the winding up, see Lindley, 1360, *et seq.*; Buckley, 168, *et seq.*, and Collier on Contributories.

Contributories.

As to the alteration of the articles by special resolution, see *infra*, "Resolutions."

Alteration of articles.

As to the clauses usually inserted in articles, see *infra*, p. 142, *et seq.*

Usual clauses.

It is well settled that if the articles as originally framed, or as altered by special resolution, purport to authorise an act prohibited by law or otherwise *ultra vires* the company, or inconsistent with the memorandum, they are *pro tanto* void. *Ashbury, &c., Co. v. Riche*, L. R. 7 H. L. 671; *Hope v. International Financial Soc.*, W. N. 1876, 257; *Dent's Case*, 8 Ch. 768.

Articles cannot authorise anything *ultra vires*.

Articles of association very commonly contain clauses purporting to appoint or authorising the appointment of officers, *e.g.*, managers, secretaries, solicitors, engineers, and others, upon certain terms as to remuneration. See as to such clauses, *supra*, p. 69.

As to appointment of officers by articles.

As to each member being entitled to a copy of the memorandum and articles, see *supra*, p. 92.

Members entitled to copy of articles.

Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such special resolution. Section 54 of the Act.

Copies of special resolutions.

Where no articles of association have been registered, a copy of any special resolution shall be forwarded, in print, to any member requesting the same on payment of one shilling, or such less sum as the company may direct. *Ibid.*

If any company makes default in complying with the provisions of the above section, it shall incur a penalty not exceeding 1*l.* for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur a like penalty. *Ibid.*

Penalty.

Before registration the articles must be stamped with a 10*s.* deed stamp and with a 5*s.* companies' registration stamp. See *supra*, p. 93.

Stamps.

ARTICLES OF ASSOCIATION.

PRECEDENT I.

Preo. I.

The Companies Acts, 1862 and 1867.

Company limited by Shares.

Articles of Association of The —— Company, Limited.

In nine cases out of ten it will be found that the articles of association of an intended company can conveniently be based on this Precedent.

PRELIMINARY.

Table A. not to apply.	1. The regulations contained in the table marked A. in the first schedule to the Companies Act, 1862, shall not apply to the company. See <i>supra</i> , p. 139. Section 15 of the Act.
Interpretation.	2. In these presents, unless there be something in the subject or context inconsistent therewith,—
The company.	“The company” and “this company” both mean The —— Company, Limited.
The capital.	“The capital” means the capital for the time being of the company.
Shares.	“Shares” means shares in the capital.
Stock.	“Stock” means stock into which any paid-up shares may have been converted.
Share warrants.	“Share warrants” means warrants issued in respect of fully paid-up shares, or of stock, in pursuance of the Companies Act, 1867, and these presents.
Registered shares or stock.	“Registered shares” and “registered stock” mean respectively shares and stock not for the time being represented by share warrants.
Members.	“Member” means a member of the company.
Directors.	“Directors” means the directors for the time being of the company.

"Secretary" and "auditors" mean those respective officers for the time being of the company.	PREC. I.
"Ordinary meeting," and "extraordinary meeting," mean respectively an ordinary general meeting and an extraordinary general meeting of the company.	Secretary. Auditors. Ordinary and extraordinary meeting.
"General meeting" means a general meeting of the company, whether ordinary or extraordinary.	General meeting.
"Special resolution" means a special resolution of the company, passed in accordance with Section 51 of the Companies Act, 1862.	Special resolution.
"Extraordinary resolution" means an extraordinary resolution of the company, passed in accordance with Section 129 of the Companies Act, 1862.	Extraordinary resolution.
"The seal" means the seal of the company.	The seal.
"The office" means the registered office for the time being of the company.	The office.
"The register" means the register of members to be kept pursuant to Section 25 of the Companies Act, 1862.	The register.
"These presents" means and includes these articles of association and any modification or alteration thereof for the time being in force.	The articles.
"The statutes" means and includes the Companies Acts, 1862 and 1867, and every other Act now, or from time to time, in force concerning joint-stock companies and applicable to the company.	The statutes.
"Month" means calendar month.	Month.
"In writing" means written or printed, or partly written and partly printed.	In writing.
Words importing the singular number only include the plural number.	
Words importing the plural number only include the singular.	
Words importing the masculine gender only include the feminine gender.	
Words importing persons include corporations.	
3. The directors shall forthwith adopt on behalf of the company and carry into effect an agreement, dated the — day of —, and made between A. B., of the one part, and C. D., on behalf of the company, of the other part.	Directors to adopt agreement.

The above form will be used where a preliminary agreement is made according to the plan I. (*supra*, p. 1). For other clauses, see Miscellaneous Clauses, Form 1. Sometimes the following words are added: "With

Pres. I.

full power to agree to such modifications or alterations thereof (if any) as they may think fit;" but the general powers, *infra*, Clause 113, and subsection 15, of Clause 114, are no doubt sufficient. See *Sahlgren & Carrall's Case*, 3 Ch. 324.

Company's
shares not to
be purchased.

[3a. The directors shall not employ the funds of the company or any part thereof in the purchase of shares of the company.]

Where a company desires to obtain the quotation of its shares in the official list of the London Stock Exchange, such a clause as above should be inserted, in order to comply with the rules. See *infra*, immediately before "Provisional Orders," for extract from rules.

When business may be commenced.

4. The business of the company may be commenced as soon after the incorporation of the company as the directors shall think fit, and notwithstanding that part only of the shares may have been allotted.

This clause is often inserted, but is not necessary, for a company may unquestionably commence business, and the directors may make calls before the whole capital has been issued. *McDougall v. Jersey Imperial Hotel Co.*, 2 H. & M. 528; *Ornamental Woodwork Co. v. Brown*, 11 W. R. 600; 9 Jur. N. S. 579. The above clause, however, is not useless, since it may prevent misunderstanding.

Sometimes, but seldom, a restrictive clause is inserted in lieu of the above, *e.g.*,

"The directors shall not make any allotment of shares unless and until at least shares shall have been applied for and allotted;" *or*,

"The company shall not commence business unless and until shares at least shall have been applied for and allotted, and £ per share paid up thereon."

The terms of the prospectus may, however, give a member an equity to restrain the company from commencing business with a totally insufficient capital. *Elder v. New Zealand Land Co.*, W. N. 1874, 85; 30 L. T. 285. See also Buckley, 17; and Lindley, 646, and cases there cited.

Allotment of
shares.

5. The shares shall be under the control of the directors, who may allot or otherwise dispose of the same to such persons, on such terms and conditions, and at such times as the directors think fit, [subject, nevertheless, to the stipulations contained in the said agreement with reference to the shares to be allotted in pursuance thereof].

The words in brackets will be omitted if no agreement is referred to in the articles.

Section 25 of the Act of 1867 must be borne in mind; see *supra*, p. 6, *et seq.* As to whether shares can be issued at a discount, see *supra*, p. 65; as to bonus shares, *supra*, p. 66.

6. The company may make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and the time of payment of such calls.

Prec.I.

Shares may be issued subject to different conditions as to calls, &c.

Section 24 of the Act of 1867 provides that nothing in the Act of 1862 shall be deemed to prevent any company under that Act, if authorised by its regulations, as originally framed or as altered by special resolution, from doing, *inter alia*, the above. It seems, therefore, expedient to take the power.

7. If, by the conditions of allotment of any share, the whole or part of the amount thereof shall be payable by instalments, every such instalment shall, when due, be paid to the company by the holder of the share.

Instalments on shares to be duly paid.

It is very common now to issue shares on terms that fixed sums shall be paid on application and allotment, and the balance or a considerable part thereof by instalments at short intervals. It is therefore expedient to insert such a clause as above. By the joint effect of the above clause, and of Section 16 of the Act, each instalment will be a debt due to the company, *supra*, p. 140. In England and Ireland it will be a specialty, and, therefore, recoverable within twenty years. 3 & 4 Will. IV. c. 42, s. 3. Compare *Cork and Bandon Ry. Co.*, 13 C. B. 826. See *supra*, p. 140, and see, as to Section 70 of the Act, *infra*, p. 160.

8. The joint holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such share.

Liability of joint holders of share.

This clause is not uncommon. It appears to be very reasonable, and affords an additional security to the company. It extends only to instalments payable and calls made during the joint lives. See cases cited in note to next clause.

9. In case of the death of any one or more of the joint holders of any registered shares or registered stock, the survivors shall be the only persons recognised by the company as having any title to or interest in such shares or stock.

As to survivorship.

This clause is commonly inserted. It is probably not necessary, for in the absence of any provision in the regulations to the contrary, it seems that the rights and liabilities in respect of a share vest in and attach to the survivors or survivor of joint holders. *Hill's Case*, 20 Eq. 595 (Companies Act of 1856). See also, *Kirby's Executors' Case*, Alb. Arb. 15; Sol. J. 922; Buckley, 177; Lindley, 686.

[9a. The company shall not be bound to recognise any Company not

Proc. I.

bound to
recognise
trusts, &c.

contingent, future, partial, or equitable interest in the nature of a trust or otherwise, in any share, or any other right, in respect of any share, except an absolute right thereto, in the person, from time to time, registered as the holder thereof, and, except also, the right of any person under Clause 30 hereof to become a member in respect of, or to transfer, any share.]

The above clause is sometimes inserted, but it is by no means clear what its effect is; it is not found in Table A. In many cases, Section 30 of the Act is deemed sufficient, viz., "No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar in the case of companies under this Act, and registered in England or Ireland." Whatever effect the clause may have, it cannot prevent a person, equitably interested in shares, from procuring the intervention of the Court to protect his rights. *Binney v. Ince Hall Coal Co.*, 35 L. J. Ch. 363. It is not competent to a company to say, "We will, by our deed, make a provision, that whatever injustice we choose to perpetrate, there shall be no remedy against that injustice in any Court of Equity." S. C. See too, *Taylor v. Midland Ry. Co.*, 8 W. R. 401, and cases on Section 20 of The Companies Clauses Consolidation Act, 1845, cited in Godefrois and Shortt, p. 20. Nor can the clause prevent an equitable mortgagee from taking the shares out of the reputed ownership of the mortgagor, by giving notice to the company, *Ex parte Stewart*, 13 W. R. 356; 11 Jur. N. S. 25; *In re Jackson*, 12 Eq. 354. And so, too, as between competing equitable assignees of shares, he who first gives notice to the company, will *oæteris paribus*, be preferred, notwithstanding the above clause. Lindley, 684; Buckley, 81.

As to what a company ought to do where it receives notice not to register a transfer, see *Tahiti Cotton Co.*, 17 Eq. 280; *Ex parte Rolt*, W. N. 1876, 91.

Companies
Seals Act,
1864.

[9b. The company may exercise the powers given by The Companies Seals Act, 1864.]

The above clause should be inserted if the objects of the company may require or confirm the transaction of business abroad. The Act is 27 Vict. c. 19, and it enables such a company to have a seal for any foreign place, district, or territory. The Act only applies where a company is expressly authorised by its articles, or by special resolution. The directors will, under Clause 113, be able to exercise the power. See also, Section 55 of Companies Act, 1862.

Note as to
insertion of
clauses rela-
ting to pre-
ference shares,
&c.

NOTE.—If the capital of the company is divided into different classes of shares, the clauses defining the rights and incidents thereof will here be inserted, *e.g.*,

PREFERENCE AND ORDINARY SHARES.

The original capital of the company shall be divided into 1000 preference shares of 10*l.* each, and 1000 ordinary shares of 5*l.* each.

The holders of the preference shares shall be entitled, &c.

The holders of the ordinary shares shall be entitled, &c.

For various clauses as to preference and other shares for insertion in articles, see *infra*, Miscellaneous Clauses, Form 2, *et seq.*

CERTIFICATES.

Prec. I.

10. The certificates of registered shares or registered stock shall be issued under the seal of the company, and signed by two directors, and countersigned by the secretary or some other person appointed by the directors. Certificates.

As to the serious responsibility incurred by a company in issuing certificates, see *infra*, "Certificates," where also will be found forms of certificates.

11. Every member shall be entitled to one certificate for all his registered shares or registered stock, or to several certificates, each for a part of such shares or stock. Every certificate of shares shall specify the number of the share in respect of which it is issued and, at the option of the member, the amount paid up thereon. Members' right to.

12. If any certificate be worn out or defaced, then, upon production thereof to the directors, they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, or, in default of proof, on such indemnity as the directors deem adequate being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate. An entry as to the issue of the new certificate, and indemnity if any, shall be made by the secretary in the minutes of the directors' proceedings. As to issue of new certificate in place of one defaced, lost, or destroyed.

The company incurs a serious responsibility by issuing a new certificate, unless the old one is cancelled; and it ought not to be done except on very satisfactory proof of loss or destruction, or on a satisfactory indemnity being given. See further, *infra*, "Certificates."

13. The sum of one shilling, or such smaller sum as the directors may determine, shall be paid to the company for every certificate issued. Fee.

Whether the above clause should be used or the following one is a matter for consideration. Both are common, but there seems no particular reason why the original members should get certificates *gratis*. It is, however, usually so provided where the company is formed to effect a reconstruction or an amalgamation; and promoters sometimes require the insertion of a clause as to issue of certificates *gratis*.

The following is another form:—

Every person to whom shares (in the original capital) shall be allotted,

Prec. I. shall be entitled, *gratis*, to one certificate in respect of each share allotted to him; but for every other certificate there shall be paid to the company such sum, not exceeding one shilling, as the directors may from time to time determine.

To which of joint-holders certificate to be issued.

14. The certificates of shares or stock registered in the names of two or more persons shall be delivered to the person first named on the register.

CALLS.

Calls.

15. The directors may, from time to time, make such calls as they think fit upon the holders of registered shares in respect of all monies unpaid thereon, and not by the conditions of allotment thereof made payable at fixed times, and each member shall pay the amount of every call so made on him to the persons and at the time, or, if made payable by instalments, at the times, and at the place or places appointed by the directors.

Every call or instalment under the above clause becomes a debt, for which the company can sue. See *supra*, note to Clause 7.

As to an action against a member for calls or other monies, see *infra*, note to Clause 19a.

It is, perhaps, needless to say that a call made by persons not duly appointed directors is void. *Howbeach Coal Co. v. Teague*, 5 H. & N. 151; 29 L. J. Ex. 137; 8 W. R. 264.

So, too, it will be a valid defence, in an action for calls, that the directors who purported to make the call were not duly qualified. *The Ironship, &c., Co. v. Blunt*, 3 C. P. 484.

A minute of the resolution making a call ought to be made, for there is some question whether the call can otherwise be proved. *Cornwall Mining Co. v. Bennett*, 5 H. & N. 423; 29 L. J. Ex. 157. But the resolution need not specify when, where, and to whom the call shall be paid. It will be sufficient if these particulars are specified in the notices to the members. *Nevry, &c., Ry. Co. v. Edmunds*, 2 Ex. 118. See further, as to calls, Buckley, 379; Lindley, 643.

As to calls payable by instalments.

16. Any call may be made payable either in one sum or by two or more instalments.

The above is not essential, for a call may certainly be made payable by instalments, *Ambergate Ry. Co. v. Norcliffe*, 6 Ex. 629; *Lawrence v. Wynn*, 5 M. & W. 355; Lindley, 651.

When call deemed to have been made.

17. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

This clause, which appears in Table A., is inserted in order to get rid

of any doubt as to whether the call is "made," when the resolution is passed, or when notice of it is given to the members. *Shaw v. Rowley*, 16 M. & W. 810. See Clauses 23, 25, *infra*, in connection with which the question is sometimes material.

Préc. I.

[17*a*. Unless the company in general meeting shall otherwise determine, no call, in respect of the shares in the original capital, shall exceed —*l.* per share, or be made payable within — months after the last preceding call was payable.]

Restrictions
on power to
make calls.

The above clause is sometimes used, but it is generally considered better to leave the directors free to exercise their discretion. The prospectus not uncommonly states that it is not intended to make calls beyond a certain amount, but such a statement of *intention* is not binding on the company; and it was held in one case that an action would lie, though the shares were applied for on the faith of a prospectus, which stated that "No further calls are contemplated." *Accidental Insurance Co. v. Davis*, 15 L. T. 182. A payment to be made on the allotment of a share is not a call. *Croskey v. Bank of Wales*, 4 Giff. 814. Where a specified period must intervene between two calls, it must be calculated from the day on which the resolution for the first call is passed to the day on which the resolution for the second one is passed. *Supra*, Clause 17.

18. Fourteen days notice of any call shall be given specifying the time and place of payment, and to whom such call shall be paid.

Notice of call.

It is always expedient to allow a reasonable time for payment of a call. If money is urgently required, the directors should raise it temporarily on debentures or mortgage, or otherwise, so as to allow sufficient time for the members to pay up. Where so many "clear days notice" is to be given, the day of giving the notice and the day on which the call is to be paid should not be counted. *Watson v. Eales*, 23 Beav. 294. If a call is made payable by instalments, the notice ought, it would seem, to be given the prescribed number of days before the time fixed for the payment of the first instalment. Notice must be given in accordance with the regulations of the company. *Watson v. Eales*, *ubi supra*.

19. If the sum payable in respect of any call, or instalment, be not paid on or before the day appointed for payment thereof, the holder for the time being of the share in respect of which the call shall have been made, or the instalment shall be due, shall pay interest for the same, at the rate of 10*l.* per cent. per annum, from the day appointed for the payment thereof to the time of the actual payment.

When interest
on call, or
instalment,
payable.

What the rate of interest should be is a matter for consideration. Sometimes 25 per cent. is specified. See *Stocken's Case*, 3 Ch. 412.

It appears that such a clause does not apply to calls made by the liquidators of a company. *In re Welsh Flannel and Treed Co.*, 20 Eq. 367.

Prec. I.

Evidence in
action for call.

[19a. On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the member sued is entered in the register of members of the company as the holder, or one of the holders, of the shares in respect of which such debt accrued; that the resolution making the call is duly recorded in the minute book; and that notice of such call was duly given to the member sued, in pursuance of these presents; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matters whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt.]

This clause is sometimes inserted; it is not contained in Table A. The provisions of the Act are generally deemed sufficient. They are as follows: Section 70 provides that, "In any action or suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter; but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due, whereby an action or suit hath accrued to the company." Under Section 37, the production of the register is sufficient *prima facie* evidence of membership; and a minute of the resolution making the call, signed as required by Section 67 of the Act, is sufficient *prima facie* evidence of the call having been duly made, and the meeting duly held, and of the due appointment of the directors. See *infra*, p. 183, note to Clause 112.

Notwithstanding the terms of the above clause, there is no doubt that the defendant would be entitled to show that he was not a member. It would, however, seem that as against a member the clause would render the duly recorded resolution of a call conclusive. See and consider *Cornwall, &c., Co. v. Bennett*, 5 H. & N. 423; 29 L. J. Ex. 157; and *Roney's Case*, 4 D. J. & S. 12 W. R. 815, 994.

Payment in
advance of
calls.

20. The directors may receive from any member willing to advance the same and upon such terms and conditions as they think fit, all or any part of the monies due upon the shares held by such member beyond the sums paid up or payable thereon.

For other forms, see *infra*, Miscellaneous Clauses, Form 18.

As to the position in the winding up of persons who have paid in advance, see *infra*, Miscellaneous Clauses, notes to Form 46.

The power to receive in advance is a trust for the benefit of the company. Hence, where directors paid up in advance their own shares, and on the same day appropriated the amount in payment of their fees, for which there were, at the time, as they knew, no other available assets, it was held that the transaction not being *bonâ fide*, the directors remained liable on the shares. *Sykes' Case*, 13 Eq. 255. See also 5 Ch. 559.

21. The company may pay dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Pres. I.

Dividend may be paid in proportion to amount paid up.

The directors may require to have this power for the purposes of Clause 20; they will be able to exercise it under Clause 113.

It appears to be necessary to give the power to the company expressly or else it could not be obtained without the sanction of a special resolution. See Section 24 of the Act of 1867, Subsection (3), *supra*, p. 145, *sed query*.

TRANSFER OF REGISTERED SHARES OR STOCK.

22. Registered shares and registered stock shall be transferable subject to the following provisions. **Transfer.**

By Section 22 of the Act, shares are to be "capable of being transferred in manner provided by the regulations of the company." Hence, it is necessary to provide for transfers; but it is well settled that, save so far as restricted by the articles, the right of transfer is absolute. It would not be within the province of this work to enter into a consideration of the numerous cases relating to transfer, but the following may be mentioned: *Weston's Case*, 4 Ch. 20. There, the only restriction on the right of transfer was that the directors had power to refuse to register a transfer made by a member indebted to the company; and it was held that the directors could not refuse to register a transfer made by a member not indebted to the company, though the company was in difficulties, and the transfer was made by him in order to escape from his responsibilities. According to the principles laid down in this case, the articles are not to be looked at to see whether they give a right to transfer, for the statute gives that, but whether they restrict the right. See also *De Pass's Case*, 4 D. G. & J. 544. Moreover, if the articles restrict the right in a specified case, then the maxim "expressio unius est exclusio alterius" applies. *Weston's Case, ubi supra*. So, where there was power to decline to register a transfer made by a member indebted to the company, or, in case of shares not fully paid up, to a transferee of whom the directors did not approve, it was held that a holder of fully paid-up shares, not indebted to the company, might distribute his shares among a number of nominees, although his object was to secure to himself the maximum of voting power at a pending meeting of the company, contrary to the spirit of the regulations of the company. *In re Stranton Steel and Iron Co.*, 16 Eq. 559. See also *Cannon v. Trask*, 20 Eq. 675. Again, the *Stocton Malleable Iron Co.* (2 Ch. Div. 101), was empowered to decline to register any transfer of shares whilst the member making the transfer was indebted to the company on any account whatever. The company were indorsees of a bill accepted by a member, but not yet payable. On the construction of the articles, it was held that indebted meant indebted in respect of a debt due and payable, and consequently that the member had a right to transfer, notwithstanding that the company held his acceptance. See further, as to the law relating to transfers, Buckley, pp. 20, 386; Lindley, p. 721.

Weston's case.

23. The instrument of transfer of any registered shares

Proc. I. or registered stock, shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such shares or stock until the name of the transferee is entered in the register in respect thereof.

Execution of transfer, &c.

The above clause is to be found in Table A. (Clause 8). The object of requiring the transferee to execute the transfer, is to fix him with an agreement to take the shares, and thereby secure him as a member; for, by Section 23 of the Act, an agreement to become a member, constitutes membership. See *Langer's Case*, 37 L. J. Ch. 292.

The main object of the latter part of the clause is to give effect to the provisions as to calls, so that a member, upon whom a call has been made, shall not be able to avoid forfeiture by a transfer.

Form of transfer.

24. The instrument of transfer of any registered share shall be in the following form, or as near thereto as circumstances will admit :

I, A. B., of —, in consideration of the sum of — pounds paid to me by C. D., of —, do hereby transfer to the said C. D., the share (or shares) numbered —, standing in my name in the books of the — Company, Limited, to hold unto the said C. D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said C. D. do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the — day of —.

It is generally deemed expedient to use this form. It is the same as that given in Table A. Sometimes the articles provide that every transfer shall be by deed. If the transfer may be "in writing" merely, an instrument, executed in blank, will be valid, if the name of the transferee be subsequently filled in. *Tahiti Cotton Co., Ex parte Sargent*, 17 Eq. 273; *Tees Bottle Co.*, 33 L. T. 834. As to stamp duty on transfer, see *infra*, Resolutions, notes to Form 19.

In what cases directors may decline to register transfer.

25. The directors may decline to register any transfer of registered shares or registered stock upon which the company has a lien by virtue of Clause 40 hereof: and in the case of shares not fully paid up, may refuse to register a transfer [to a transferee of whom they do not approve].

Or the words in brackets may be omitted, and the following substituted: "Without assigning any reason therefor."

From what has been said in the note to Clause 22, it appears that if the right of transfer is to be restricted, express provisions must be inserted in the articles for the purpose. It is not found in practice that a clause as above affects the marketable value of the shares, for it is always

assumed that the transfer will be passed, and, of course, it generally is. If, however, the company has a lien, the clause enables it to preserve the same; and this is often a matter of importance. It is expedient, as above, to make the clause apply to *any* case where the company has a lien, and not merely, as is often done, to the case of a member who is "indebted" to the company. See *In re Stocton Malleable Iron Co.*, 2 Ch. Div. 101; and see also *infra*, note to Clause 40.

PREC. I.

It is generally thought sufficient, in addition to providing for the preservation of the lien, to give the directors power to decline to register a transfer of shares, not fully paid up, to a transferee of whom they do not approve. If the company gets into difficulties, this will enable the directors to prevent the introduction of insolvent members. Where such a discretion is given, the directors will not, if acting *bonâ fide*, be compelled to give their reasons for refusing to register a transfer. If they exercise their power capriciously or wantonly, it must be alleged and proved; the Court will then interfere, but not otherwise. *Ex parte Penney*, 8 Ch. 452. "I cannot," said James, L.J., in this case, "conceive that any director would choose to accept office, or exercise the power entrusted to him, if he were liable to be called upon to say what the particular reasons were, or the particular motive was, which influenced him in coming to the conclusion that any person was not eligible as a shareholder. . . . I am of opinion that we cannot sit as a Court of Appeal from the conclusion which the directors have arrived at, if we are satisfied that the directors have done that which alone they could be compelled by mandamus to do, to take the matter into their consideration."

So in *Puckle's Case*, Jessel, M.R., said, that where the articles authorised the directors to refuse to register a transfer, "if they were of opinion that the transferee was not a responsible person," there was no appeal from their decision. L. J., Notes of Cases, 1875, 19.

If they refuse, they are not under any obligation to send notice of their refusal to the transferor. *Gustard's Case*, 8 Eq. 438.

It has not been settled what an absolute discretion, vested in the directors, as to the registration of a transfer, warrants; but having regard to *Ex parte Penney*, *ubi supra*, it would seem to enable them to decline to register, without specifying their reasons, in any case where they deem it for the good of the company so to do. This would cover the case which occurred in the *Stranton, &c., Co.*, 16 Eq. 559, cited *supra*, p. 151.

[25a. No transfer of registered shares or registered stock shall be made to an infant or person of unsound mind, nor, except under the Married Woman's Property Act, 1870, to a married woman.] No transfer to infant, &c.

The above is now commonly inserted. Even apart from such a clause, a company cannot be compelled to accept an infant transferee; and, if shares be transferred to an infant, the company may, on discovering the infancy, decline to confirm the transfer, and upon motion under Section 35 of the Act, can procure the rectification of the register by restoring the name of the transferor. *Symon's Case*, 5 Ch. 801. The principle is that a man who executes a transfer remains liable, unless and until there is on the list a transferee who is legally liable to the company. If, however, the company has knowingly acquiesced it will be bound. *Parson's*

Spec. I. *Case*, 8 Eq. 656. And so also if it has allowed the infant to transfer his shares. *Gooch's Case*, 8 Ch. 266.

As to married women, see the Married Woman's Property Act, 1870, (33 & 34 Vict. c. 93), amended by 37 & 38 Vict. c. 50. See also *Reg. v. Carnatic Ry. Co.*, L. R. Q. B. 299, and Buckley, 73.

Transfer to be left at office, and evidence of title given. 26. Every deed of transfer shall be left at the office for registration, accompanied by the certificate of the shares or stock to be transferred, and such other evidence as the company may require to prove the title of the transferor, or his right to transfer the shares or stock.

This clause is expedient by reason of the liabilities which the company incurs if it issues a certificate of shares in pursuance of a forged transfer. See further, *infra*, "Certificates."

The uttermost caution ought to be used in regard to registration of transfers. It is very common to give notice to the transferor of the presentation of the transfer before it is registered. *In re Bahia, &c., Co.*, 3 L. R. Q. B. 584.

When transfers to be retained. [26a. All instruments of transfer which shall be registered shall be retained by the company, but any instrument of transfer which the directors may decline to register shall (except in case of fraud) be returned to the person depositing the same.]

The above is sometimes used.

Fee on transfer. 27. A fee not exceeding 2s. 6d. may be charged for each transfer, and shall, if required by the directors, be paid before the registration thereof.

When transfer books may be closed. 28. The transfer books may be closed during such time as the directors think fit, not exceeding in the whole twenty-one days in each year.

Table A. in lieu of the above provisoes (Clause 11) :—

"The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year."

By Section 33 of the Act it is provided that any company may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

TRANSMISSION OF REGISTERED SHARES OR STOCK.

Transmission of registered shares. 29. The executors or administrators of a deceased member shall be the only persons recognised by the company as having

any title to the registered shares or registered stock of such member. Proc. I.

A clause to this effect is invariably inserted. Section 24 of the Act provides that any transfer of the share or other interest of a deceased member made by his personal representative shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. Until transfer under this power, or until the personal representative personally accepts the shares, the estate of the deceased member is alone liable. See *Baird's Case*, 5 Ch. 725. See further, Buckley, 39; Lindley, 661.

30. Any parent or guardian of any infant member, or any committee of a lunatic member, or any person becoming entitled to registered shares or registered stock in consequence of the death of any member or of the marriage of any female member, or in any other way than by transfer, upon producing such evidence that he sustains the character in respect of which he proposes to act under this clause, or of his title, as the directors think sufficient, may, with the consent of the directors, be registered himself as a member in respect of such shares or stock, or, subject to the regulations as to transfers, hereinbefore contained, may transfer the same to some other person.

As to transfer of shares of infants, lunatics, &c.

This clause, with more or less variation, is a common one. It is generally expedient, if possible, to secure a living responsible member in the place of a deceased member or one under disability. Of course if any person, under this clause, becomes a member, he is personally liable on the shares, but this does not affect the equities subsisting between him and the infant, lunatic, or other member in whose place he stands.

Even apart from this clause the personal representatives of a deceased member can transfer. See note to Clause 29.

Section 22 of the Bankruptcy Act, 1869, gives the like power to the trustee of a bankrupt; the trustee may also disclaim: Section 23 of same Act.

Sometimes the company reserves power to forfeit the share of any deceased or incapacitated member unless, after notice to his executors, &c., some other person is registered in his place. But such a power has a harsh aspect, and is by no means common. Clause 118*a* (*infra*, p. 192,) generally operates as a sufficient inducement to parties to act under this clause.

SHARE WARRANTS TO BEARER.

31. The company may issue share warrants, and may provide, by coupons or otherwise, for the payment of future dividends on the shares or stock included in such warrants.

Power to issue share warrants.

The Act of 1867 empowers a company limited by shares, if authorised

Proc. I. *as to do by its regulations as originally framed or as altered by special resolutions, to issue share warrants. See Sections 27—36 of the Act. For interpretation of "share warrants," see supra, p. 142.*

The share warrants must be under the seal of the company, and will entitle the bearer to the shares or stock therein specified; and such shares or stock will be transferable by delivery of the share warrant, see form of share warrant, infra, "Certificates."

As to conditions on which share warrants shall be issued.

32. The directors may [with the sanction of the company in general meeting] determine, and [with the like sanction], from time to time, vary the conditions upon which share warrants shall be issued, and, in particular, upon which a new share warrant or coupon will be issued in the place of one worn out, defaced, lost, or destroyed; upon which the bearer of a share warrant shall be entitled to attend and vote at general meetings; and upon which a share warrant may be surrendered, and the name of the holder entered in the register in respect of the shares or stock therein specified. Subject to such conditions, and to these presents, the bearer of a share warrant shall be a member to the full extent.

The words in brackets may generally be omitted.

Sometimes all the matters referred to in the above clause are expressly provided for by the articles, but it is generally thought better not to incumber the articles with such matters of detail, since in the great majority of companies share warrants are never issued.

For form of conditions, see infra, Resolutions, Form 19.

The bearer of a share warrant may, if desired, be deprived of the right of voting, but this is seldom done.

It will be borne in mind that the bearer of a share warrant is not thereby qualified for office when a share qualification is required; Section 30 of the Act of 1867. But of course the articles might provide that the qualification of a director should be the holding of share warrants for so many shares. See Pearson's Case, 4 Ch. Div. 222.

FORFEITURE OF SHARES.

If call or instalment not paid, notice may be given.

33. If any member fail to pay any call or instalment on or before the day appointed for the payment of the same, the directors may, at any time thereafter during such time as the call or instalment remains unpaid, serve a notice on such member requiring him to pay the same together with any interest that may have accrued, and all expenses that may have been incurred by the company, by reason of such non-payment.

The power of forfeiture is a most valuable one for enforcing the payment of calls and instalments. But it is to be treated as strictissimi

juris. Hart v. Clark, 6 H. L. Cas. 633; *The Garden Gully, &c., Co. and McLister*, 1 App. Cas. 39. **Pres. I.**

In order that the forfeiture for non-payment of calls shall be valid, the call must have been duly made. As to this, see *supra*, note to Clause 15; the notices prescribed by the regulations must have been duly given, and the resolution to forfeit the shares must be a valid one. Where therefore it appeared that the directors who made the call and passed the resolution for forfeiture had not been duly elected, the forfeiture was held void. *Garden Gully, &c., Co. and McLister, ubi supra.*

The power is a trust to be exercised for the benefit of the company, and, if it is used for the purpose of enabling members to escape from their liabilities, the transaction cannot stand. See further as to forfeiture, Buckley, 394.

34. The notice shall name a day (not being less than fourteen days from the date of the notice), and a place, or places, on and at which such call or instalment and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call was made or instalment is payable, will be liable to be forfeited. Form of notice.

35. If the requisitions of any such notice as aforesaid, are not complied with, any shares, in respect of which such notice has been given, may, at any time thereafter, before payment of all calls or instalments, interest and expenses, due in respect thereof, be forfeited by a resolution of the directors to that effect. If notice not complied with shares may be forfeited.

The forfeiture may be held valid although this clause has not been strictly observed. *Woolaston's Case*, 4 De G. & J. 437; *Knight's Case*, 2 Ch. 321.

Of course the directors are not bound to exercise the power of forfeiture. *Rigg's Case*, 1 Eq. 309.

[35a. When any shares shall have been so forfeited, notice of the resolution shall be given to the member in whose name it stood prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register.] Notice after forfeiture.

This clause is sometimes inserted, and it seems reasonable in order that the member may have an opportunity of getting the forfeiture annulled under Clause 37. It does not follow that the failure to give the notice invalidates the forfeiture. *Webster's Case*, 32 L. J. Ch. 135.

36. Any share so forfeited shall be deemed to be the property Forfeited share to

Proc. I. of the company, and the directors may sell, re-allocate, and otherwise dispose of the same in such manner as they think fit.
being the property of company. This clause is almost always inserted.

Power to annul forfeiture. 37. The directors may, at any time before any share so forfeited shall have been sold, re-allocated, or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

Evidence of forfeiture. 38. A certificate in writing, under the hands of two of the directors, and countersigned by the secretary, that a share has been duly forfeited in pursuance of these presents, and stating the time when it was forfeited, shall be conclusive evidence of the facts therein stated as against all persons who would have been entitled to the share but for such forfeiture, and such certificate and the receipt of the company for the price of such share shall constitute a good title to such share.

The above clause is in general use and is valuable; the object is to relieve the purchaser of forfeited shares from the onus of examining into the validity of the forfeiture.

Arrears to be paid notwithstanding forfeiture. 39. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay, and shall forthwith pay to the company all calls, instalments, interest, and expenses, owing upon or in respect of such shares at the time of the forfeiture, together with interest thereon, from the time of forfeiture until payment, at 10 per cent. per annum, and the directors may enforce the payment thereof if they think fit.

In the absence of such a clause as above, it appears that the forfeiture would be taken to preclude the company from suing for calls. *Stocken's Case*, 3 Ch. 412. From the same case it appears that the liability under this clause must be treated as a new one, binding under Section 16 of the Act, (see *supra*, note to Clause 7,) and not as a preservation of the liability existing at the time of forfeiture. It is necessary therefore to prescribe the rate of interest, since the provision in Clause 19 will not apply. *Stocken's Case*, *ubi supra*.

Effect of forfeiture. [39a. The forfeiture of a share shall involve the extinction of all interest in, and also of all claims and demands against the company in respect of the share, and all other rights incident to the share except only such of those rights as by these articles are expressly saved.]

Although the above clause is sometimes inserted, it appears to be of little or no value.

In substance it merely provides for that which is otherwise provided for, namely, that a forfeited share shall be deemed to be the property of the company. If strictly construed it would deprive a future holder of the share of the right of voting and of receiving dividends, &c. See *Stockton's Case*, 3 Ch. 412.

In *Creyke's Case*, 5 Ch. 63, it was contended that the forfeiture of shares in a company whose articles contained such a clause freed the forfeiting member from liability even as a past member; but it was held that this was not so.

Prec. I.

LIEN.

40. The company shall have a first and paramount lien upon all the registered shares and registered stock of each member for his debts, liabilities, and engagements, solely, or jointly, with any other person, to or with the company, whether the period for the payment, fulfilment, or discharge thereof, shall have actually arrived or not.

Company's
lien on shares.

It is usual expressly to give a company a lien as above. It is possible that a lien might be implied though not expressly given, *Lindley*, 706; but this possibility is not relied on in practice. See *Pinkett v. Wright*, 2 Ha. 120; 12 Cl. and Fin. 764.

As to the above clause, see *In re Stockton, &c.*, Co. 2 Ch. Div. 101; *In re Lewis*, 6 Ch. 818; *Lindley*, 706; *Buckley*, 390.

41. For the purpose of enforcing such lien, the directors may sell the shares or stock subject thereto, without any notice to or consent by the holder of such shares or stock or any other person, but no sale shall be made unless and until default be made in the payment, fulfilment, or discharge of such debts, liabilities, or engagements.

As to en-
forcing lien by
sale.

The lien is of much greater value if it can be enforced in a summary manner by sale of the share subject to it. Although Table A. indirectly gives a lien (Clause 10,) it does not confer on the company a power of sale.

The restriction contained in the latter part of the above clause has only recently come into use, but it seems only fair and equitable. See observations of Jessel, M. R., *In re Stockton, &c.*, *ubi supra*.

42. The net proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities, or engagements, and the residue (if any) paid to such member or his representatives.

Application of
proceeds of
sale.

43. A certificate in writing under the hands of two of the directors and countersigned by the secretary, that the last-mentioned power of sale has arisen and is exercisable by the

Pres. I. company under these presents, shall be conclusive evidence of the facts therein stated.

44. Upon any such sale the directors, or any two of them, may execute a transfer of such shares or stock to the purchaser thereof, and such transfer, with the certificate last aforesaid, shall confer on the purchaser a complete title to such shares or stock.

CONVERSION OF SHARES INTO STOCK.

Conversion of
shares into
stock.

45. The company [in general meeting] may convert any paid-up shares into stock.

Any company limited by shares, if authorised by its regulations as originally framed, or as altered by special resolution, may convert its paid-up shares into stock. Sec. 12 of the Act. See *supra*, p. 82. The power is not often exercised, and the clauses relating to it might, if brevity be desired, be omitted. They can at any time be supplied by special resolution. If the words in brackets are omitted the directors will be able to exercise the power under clause 113, *infra*.

See further as to conversion of shares into stock, "Resolutions," notes to Form 10. If desired, the clause may run thus: "The company may by special resolution convert," &c.

Transfer of
stock.

46. When any shares have been converted into stock, the several holders of such stock may, thenceforth, transfer their respective interests therein, or any part of such interests, in the manner and subject to the regulations hereinbefore provided.

Rights of
holders of
stock.

47. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

INCREASE OF CAPITAL.

Power to

48. The company in general meeting may, from time to

time, increase the capital by the creation of new shares of such amount as may be deemed expedient.

Pres. I.

increase
capital.

Any company limited by shares, if authorised to do so by its regulations as originally framed, or as altered by special resolution, may increase its capital. Sec. 12 of the Act. Under the above clause the increase can be effected by a simple resolution passed at an extraordinary meeting. Not uncommonly it is thought better to require the sanction of a special resolution to an increase. Thus : "48a. The company may from time to time by special resolution increase," &c.; or, the directors may be empowered to increase the capital at their discretion. See *infra*, Miscellaneous Clauses, Form 19.

49. The new shares shall be issued upon such terms and conditions, and with such rights and privileges annexed thereto [as the general meeting, resolving upon the creation thereof, shall direct, and, if no direction be given], as the directors shall determine; and in particular such shares may be issued with a preferential or qualified right to dividends, and in the distribution of assets of the company, and with a special or without any right of voting.

On what conditions new shares may be issued. As to preferences, &c.

See further, *infra*, Miscellaneous Clauses, Form 19.

If clause 48a is used, then omit the words within brackets in the above clause and substitute these : "as by the special resolution creating the same shall be directed, and if no direction be given," &c.

See further as to increase of capital, *infra*, where forms of resolutions, notices, &c., will be found.

50. The company [in general meeting] may, before the issue of any new shares, determine that the same, or any of them, shall be offered in the first instance to all the then members, in proportion to the amount of the capital held by them, or make any other provisions as to the issue and allotment of the new shares; but, in default of any such determination, or so far as the same shall not extend, the new shares shall be subject to Clause 5 hereof.

When to be offered to existing members.

In lieu of the above clause, which is very commonly used, the following, which is similar to clause 27 in Table A., may, if preferred, be substituted: "Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given, that he declines to accept the

PREC. I.

shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company."

How far new shares to rank with shares in original capital.

51. Except so far as otherwise provided by the conditions of issue, or by these presents, any capital raised by the creation of new shares shall be considered part of the original capital, and shall be subject to the provisions herein contained, with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien, surrender, and otherwise.

The above clause ought to be taken into consideration upon any increase of capital. Where, as in this precedent, "the capital" and "shares" are specially interpreted, *supra*, p. 142, it would seem that this clause might be dispensed with. See also observations of Kindersley, V.-C., in reference thereto. *Hutton v. Scarborough, &c., Co.*, 13 W. R. 1061. As to the operation of the clause, see *Harrison v. Mexican Ry. Co.*, 19 Eq. 358, and *Bangor, &c., Co.*, 20 Eq. 59.

REDUCTION OF CAPITAL, CONSOLIDATION AND SUBDIVISION OF SHARES.

Reduction of capital, &c.

52. The company may, from time to time, reduce its capital, and may, by consolidation, or subdivision, divide the capital, or any part thereof, into shares of larger or smaller nominal amount.

As to reduction of capital, see *infra*, Resolutions, Form 15, *et seq.*

As to consolidation of shares, see *infra, ibid.* Form 11.

As to subdivision of shares, see *infra, ibid.* Form 12, *et seq.*

SURRENDER OF SHARES OR STOCK.

Surrender of shares.

53. The directors may [with the sanction of a general meeting] accept from any member, on such terms and conditions as shall be agreed, a surrender of his shares or stock or any part thereof.

The words in brackets are generally omitted.

A power to accept surrenders is valid, and a surrender which does not amount to a reduction of capital is not open to any objection, *e.g.*, if a 10*l.* share with 5*l.* paid up be surrendered for two shares of 5*l.* each, credited with 2*l.* 10*s.* paid up on each share. *Teasdale's Case*, 9 Ch. 54. But if the surrender would amount to a reduction of capital it would seem that it is only valid if (1) it is *bonâ fide* for the benefit of the company, or (2) is carried into effect as a reduction of capital in accordance with the Act of 1867. *Hope v. International Financial Society*, W. N. 1876, 295. In *Teasdale's Case*, Mellish, L.J., said that "*Snell's Case* and *Campbell's Case*, are direct authorities, that where the articles authorise the surrender of shares, such surrender is valid if made *bonâ fide* and with a view to the benefit of the company. See also *Morgan's Case*, 1 De G. & Sm. 750; 1 Mac. & G. 225; *Laves' Case*, 1 D. M. & G. 421; *Bennett's*

Case, 5 D. M. & G. 284. In *Snell's Case* (5 Ch. 22), referred to above, the surrender was *bonâ fide*, and seemingly for the benefit of the company, *viz.*, to avoid litigation, for there was some suggestion that a fraud had been committed on Snell. See *Snell's Case*, 18 W. R. 30. It is to be observed that the surrender was not impeached in Snell's case on the ground that it amounted to a reduction of capital. *Campbell's Case* does not appear to be a direct authority as to surrender. As to what is a reduction of capital, see *infra*.

PREC. I.

BORROWING POWERS.

54. The directors may, from time to time, at their discretion, borrow from the directors, members, or other persons, any sum or sums of money for the purposes of the company, but so that [the monies at any one time owing shall not, without the sanction of a general meeting, exceed the nominal amount of the capital.]

Power to borrow.

The words in brackets may be omitted and the following substituted: "But so that not more than —*l.* be owing at any one time without the sanction of a general meeting."

Where the company has power to borrow and mortgage, as to which see *supra*, p. 105, there is no need expressly to delegate the power to the directors, provided that the articles contain a general delegation of the powers of the company, as *infra*, clause 113. In *re Patent File Co.*, 6 Ch. 83; *Gibbs and West's Case*, 10 Eq. 312; *Anglo-Danubian, &c., Co.*, 20 Eq. 339.

Nevertheless it is usual to give the directors express power. How far the power should be fettered or limited is a matter of arrangement. It is by no means uncommon to vest the power in the directors absolutely. If this is to be done, omit from "but so that" to end of clause. In small companies it is not unusual to require the sanction of a special resolution.

As to the validity of securities given for money borrowed beyond the limit, see the rule in the *Royal British Bank v. Turquand*, *infra*.

As to personal liability of directors to lenders, where the borrowing powers are exceeded, see *Weeks v. Propert*, L. R. 8 C. P. 427, and cases there cited. Even where directors have an unrestricted power to borrow they not uncommonly seek the sanction of a general meeting before exercising the power.

55. The directors may raise or secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit, and, in particular, by the issue of debentures or bonds of the company, or by the creation of debenture stock, or by making, drawing, accepting, or indorsing, on behalf of the company, any promissory notes, or bills of exchange, or giving or issuing any other security of the company, or by mortgage or charge of all or any part of the

Conditions on which money may be borrowed.

Pres. I. property of the company, and of its uncalled capital for the time being.

As to debentures, see *infra*, "Debentures."

Securities may be assignable free from equities.

[55a. Every debenture, or other instrument, for securing the payment of money, issued by the company, may be so framed that the monies thereby secured shall be assignable free from any equities between the company and the person to whom the same may be issued.]

This clause is sometimes inserted. As to its object, see *infra*, introductory notes to "Debentures." Where a company has power to issue negotiable instruments, the above clause is probably not necessary, *supra*, p. 106.

56. Any debentures, bonds, or other securities, may be issued at a discount, premium, or otherwise.

This clause is sometimes inserted, but the power to "raise" money given by Clause 55, and the general power given by Clause 113, are probably sufficient. *In re Anglo-Danubian Steam, &c., Co.*, 20 Eq. 341.

Register of mortgages to be kept.

57. The directors shall cause a proper register to be kept, in accordance with Section 43 of the Companies Act, 1862, of all mortgages and charges specifically affecting the property of the company.

This clause is inserted by way of reminder. See result of omission to register mortgage, *infra*, introductory notes to "Debentures."

GENERAL MEETINGS.

When first general meeting to be held.

58. The first general meeting shall be held at such time, (not being more than four months after the registration of the memorandum of association of the company,) and at such place as the directors may determine.

The Companies Act, 1867, requires every company to hold a first meeting within four months after the registration of its memorandum of association. An extraordinary meeting is a sufficient compliance with this provision. *Lord Claude Hamilton's Case*, 8 Ch. 548.

When subsequent general meetings to be held.

59. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and, if no other time or place is prescribed, a general

meeting shall be held in the month of — in every year at such time and place as may be determined by the directors. Prec. I.

The Act of 1862 provides (Section 49) that "A general meeting of every company under this Act shall be held once at the least in every year." In this section, 'year' means calendar year, *i.e.*, the period of time commencing on the 1st of January, and ending on the 31st of December, and not the period of twelve months, ending upon the anniversary of the registration. *Gibson v. Barton*, L. R. 10 Q. B. 329.

See Section 26 of the Act, as to the return of a list of "all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting is held, are members of the company."

60. The above mentioned general meetings shall be called ordinary general meetings ; all other meetings of the company shall be called extraordinary general meetings. Distinction between ordinary and extraordinary meetings.

61. The directors may whenever they think fit, and they shall, upon a requisition made in writing by members holding in the aggregate [one-fifth of the issued capital], convene an extraordinary meeting. When extraordinary meeting to be called.

This is a very usual clause. Sometimes it is thought better to prescribe a fixed number of shares. In such case, omit the words in brackets, and substitute, "not less than [fifty] shares." Or the clause may run—"the directors, &c., upon a requisition made in writing, by not less than one-fifth in number of the members, convene, &c." Sometimes the two are combined, *e.g.*, "upon a requisition in writing, made by any five or more members holding, &c." If the power is to be given, it is as well not to fetter the exercise by conditions which are difficult to comply with.

62. Any such requisition shall specify the object of the meeting required, and shall be signed by the members making the same, and shall be deposited at the office. Form of requisition for meeting.

63. In case the directors fail to convene an extraordinary meeting within twenty-one days from the time of such deposit, the requisitionists [or any other members holding the like proportion of the capital,] may themselves convene a meeting ; but no such requisition shall remain in force for more than two calendar months from the time when the same shall be deposited at the office. When requisitionists may call meeting.

This clause will have to be modified if Clause 61 is altered. See note to that clause ; *e.g.*, by omitting the words in brackets, and inserting these : "or any members holding not less than fifty shares ;" or the following : "or any members not being less than one-fifth in number of the members ;" or, "or any five or more members holding the like proportion of the capital."

Pres. I. 64. Seven clear days' notice at the least, specifying the place, day, and hour of meeting, and, in case of an extraordinary meeting, the purpose for which it is to be held, shall be given either by advertisement or by notice sent by post or otherwise served as hereinafter provided. Whenever any meeting is adjourned for twenty-one days or more, at least five days' notice of the place and hour of meeting of such adjourned meeting shall be given in like manner.

As to notice, see infra, p. 184, and "Notice."

An adjourned meeting is considered a continuation of the original meeting. *See Beading v. Leland*, 1 H. L. Cas. 426.

In the absence of special provision, notice of an adjourned meeting need not be sent to every member. *Wells v. Murray*, 4 Ex. 843.

As to omission to give notice. 65. The accidental omission to give any such notice to any of the members shall not invalidate any resolution passed at any such meeting.

Sometimes this clause runs: "The non-receipt of such notice by any member shall not, &c." This is the form in Table A.

In one form or the other the clause is always inserted.

Power for member to submit resolution. [65a. Any member entitled to vote may, subject to the following proviso, submit any resolution to any extraordinary meeting beyond the matters specified in the notice calling such meeting. Provided always that such member shall deposit at the office — days at the least before the time appointed for the said meeting, a notice signed by him stating his intention to submit such resolution and containing a copy thereof, together with the sum of 10*l.* in cash for expenses. Upon the receipt thereof the secretary shall, with all reasonable dispatch, give notice to the members that such resolution will be proposed.]

The above clause is occasionally inserted.

PROCEEDINGS AT GENERAL MEETINGS.

Business of ordinary meeting. 66. The business of an ordinary meeting shall be to receive and consider the statement of income and expenditure, and the balance-sheet to be laid before the meeting pursuant to clause — hereof, the reports of the directors and of the auditors pursuant to Clauses 139 and 146 hereof respectively, to elect directors and other officers in the place of those

retiring by rotation, and to decide on the recommendation of the directors as regards dividends. All other business shall be deemed special, and shall be transacted at an extraordinary meeting.

Spec. I.
Special business.

67. Three members personally present shall be a quorum for a general meeting for the choice of a chairman, the declaration of a dividend and the adjournment of the meeting. For all other purposes the quorum for a general meeting shall be five members personally present, holding, or representing by proxy, not less than one-tenth part of the issued capital of the company. No business shall be transacted at any general meeting unless the requisite quorum be present at the commencement of the business.

Quorum.

If the articles do not say "personally" present, can a member present by proxy be counted in a quorum? See *Cambrian, &c. Co.*, W. N. 1876, p. 6; 31 L. T. 773.

Of course a resolution passed at a meeting at which a quorum is not present is void; and so also if passed by votes of persons not entitled to vote, *e.g.*, because indebted to the company. See Clause 84, *infra*, p. 172, and the case above mentioned. As to whether provisions in the articles as to quorum apply in case of meetings held for passing a special or extraordinary resolution as defined by Sections 51 and 129 of the Act of 1862 respectively, see *infra*, introductory notes to "Resolutions."

Table A. provides by Clause 37 as follows: "No business shall be transacted at any general meeting except the declaration of a dividend unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum shall be ascertained as follows:—that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty."

68. The chairman of the directors shall be entitled to take the chair at every general meeting, or, if there be no chairman, or, if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting, the members shall choose another director as chairman, and, if no director be present, or, if all the directors present decline to take the chair, then the members present shall choose one of their number to be chairman.

Chairman of general meeting.

69. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon such requisition as aforesaid, shall be dissolved; but in any other case it shall stand adjourned to the same day in the

When, if quorum not present, meeting to be dissolved, and

Prec. I. next week, at the same time and place, and if at such adjourned meeting a quorum is not present, [those members who are present shall be a quorum, and may transact the business for which the meeting was called.]

when to be
adjourned.

Or the words in brackets may be omitted and the following inserted : "it shall be adjourned *sine die*." This is the form in Table A., but the above is now frequently used, for it is found that members are often so supine that it is almost impossible to get together a quorum although the business may be pressing.

How questions
to be decided
at meetings.
Casting vote.

70. Every motion submitted to a meeting shall be decided, in the first instance, by a show of hands, and in the case of an equality of votes the chairman shall, both on show of hands and at the poll, have a casting vote in addition to the vote or votes to which he may be entitled as a member.

It is said that if the number of votes at a general meeting is equal the chairman has no casting vote by common right. Thring, 97.

What is to be
evidence of
the passing of
a resolution
where poll not
demanded.

71. At any general meeting, unless a poll is demanded by at least five members, or by a member or members holding or representing by proxy or entitled to vote in respect of at least one-fifth part of the capital represented at the meeting, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Poll

72. If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the chairman of the meeting directs, and two scrutineers shall be appointed, one of whom shall be nominated by the chairman and the other by the mover of the resolution in respect of which such poll is demanded, and such scrutineers shall report to the chairman, in writing, the result of such poll. The report of such scrutineers shall be conclusive, and the chairman shall declare the result of the poll accordingly, and such declaration shall be deemed to be the resolution of the meeting at which the poll was demanded.

Scrutineers.

See *infra*, Precedent III., power for chairman to direct the voting on a poll to be by ballot.

As to a scrutiny, see *The Wandsworth, & Co., Co. v. Wright*, 18 W. R. 728. The result as entered on the minutes is *prima facie* correct.

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| <p>73. Any general meeting shall have power to adjourn from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.</p> <p>74. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.</p> | <p>Prec. I.</p> <hr/> <p>Power to adjourn general meeting.</p>
<p>Business may proceed notwithstanding demand of poll.</p> |
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VOTES OF MEMBERS.

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|---|--------------------------|
| <p>75. Every member shall have one vote for every share held by him up to ten, and he shall have an additional vote for every — shares beyond the first ten shares, [but no member shall have more than — votes.]</p> | <p>Votes of members.</p> |
|---|--------------------------|

The right of voting always deserves careful consideration. Sometimes a class of members is given no voting power, *e.g.*, see Founders' shares, *infra*, Miscellaneous Clauses.

And where a large proportion of the capital is to be issued to a vendor his rights of voting in respect thereof are sometimes limited. These are matters for the consideration of the promoters.

Although a member is entitled to vote as he likes, *East Pant, &c., Co. v. Merryweather*, 2 H. & M. 254; *London & Merc. Dis. Co.*, 1 Eq. 277; a majority will not be allowed to obtain for themselves an advantage at the expense of the minority. *Menier v. Hooper's Telegraph Works*, 9 Ch. 350; see also *Atwood v. Merryweather*, 5 Eq. 464.

A member is entitled to transfer his shares to nominees so as to secure to himself the maximum of voting power, and the directors must register the transfers, unless the articles give them a power to decline which is applicable in such case. *Stranton Iron Co.*, 16 Eq. 559; see further, *supra*, p. 151.

However, it is seldom deemed necessary expressly to restrict the right of transfer in this respect. Clause 118*a*, *infra*, is however sometimes inserted, and in all ordinary cases prevents what was done in the case above mentioned. But though Clause 118*a* may be found useful in this respect, it is open to objection on the score of inconvenience and on other grounds.

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| <p>76. Any parent, guardian, or other person entitled under Clause 30 hereof to transfer any shares or stock, may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of such shares or stock, provided that forty-eight hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the directors of his right to transfer such shares or stock, or unless the directors shall have previously admitted his right to vote at such meeting in respect thereof.</p> | <p>Who may vote for infant, lunatic, &c., and subject to what conditions.</p> |
|--|---|

Proc. I.

Which of
joint holders
of share to
vote.

77. If there be joint holders of any registered shares or registered stock, the member whose name stands first on the register, and no other, shall be entitled to vote in respect of such shares or stock, but the other or others of the joint holders shall be entitled to be present at any general meeting.

In what cases
no poll.

78. No poll shall be demanded on the election of a chairman of a meeting, or on any question of adjournment.

As to whether a poll can be demanded in relation to adjournments, see *McDougall v. Gardiner*, 1 Ch. Div. 13.

Chairman to
decide as to
validity of
votes.

[78a. The chairman of any meeting shall be the sole and absolute judge of the validity of every vote tendered at such meeting or at the poll demanded at such meeting, and may allow or disallow the votes tendered, according as he shall be of opinion that the same are or are not valid.]

The above clause is sometimes inserted.

No objection
to vote except
at meeting.

[78b. No objection shall be made to the validity of any vote except at the meeting or poll at which such vote shall be tendered, and every vote, whether given personally or by proxy, not disallowed at such meeting or poll, shall be deemed valid for all purposes of such meeting or poll whatsoever.]

The above clause is occasionally inserted. See *Garden Gully, &c., Co. v. McLister*, 1 App. Cas. 48.

Proxies per-
mitted.

79. Votes may be given either personally or by proxy.

There appears to be no right at common law to vote by proxy. See Grant on Corporations, 256; hence it must be expressly given.

Instrument
appointing
proxy to be in
writing;

80. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under its common seal, and shall be attested by one or more witnesses. No person shall be appointed a proxy who is not a member of the company and qualified to vote.

and to be de-
posited at
office.

81. The instrument appointing a proxy shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in such instrument proposes to vote, [but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.]

Sometimes the words within brackets in the above clause are omitted and the following substituted : "and no proxy shall be entitled to vote except at the particular meeting mentioned in the instrument, or any adjournment thereof, and upon every poll that may take place at or in consequence of any such meeting or adjournment." But there seems no sufficient reason why a member should not be enabled to appoint a proxy for a specified period. It was very proper to insert such a provision when the law would not permit the appointment of a proxy except in regard to a specified meeting. See *infra*, note to Clause 83.

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[81a. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation, or transfer shall have been received at the registered office of the company before the meeting.]

When vote by proxy valid though authority revoked.

This is occasionally inserted and may be useful.

82. Holders of share warrants shall not be entitled to vote by proxy in respect of the shares or stock included in such warrants.

Holders of share warrants not to vote by proxy.

83. Every instrument of proxy shall be in the form or to the effect following :—

Form of proxy.

The — Company, Limited. I —, of —, in the county of —, being a member of The — Company, Limited, and entitled to — vote (*or* votes), hereby appoint —, of —, [*or* failing him, — of —, *or* failing him, — of —,] as my proxy, to vote for me and on my behalf at the (ordinary *or* extraordinary as the case may be) general meeting of the company to be held on the — day of —, and at any adjournment thereof, [*or* at any meeting of the company that may be held in the year —.]

As witness my hand, this — day of —.

Signed by the said — in the presence of —.

By virtue of 7 & 8 Vict. c. 21, s. 6, and 19 & 20 Vict. c. 81, s. 2, a proxy could only be appointed for a specified meeting, but both those Acts were repealed by the Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99). By the Stamp Act, 1870, as amended by 34 Vict. c. 4, a letter or power of attorney or commission, factory, or mandate, or other instrument in the nature thereof for the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or

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more, is charged with the duty of one penny, and any other instrument appointing a proxy is liable to a duty of 10s.

Hence if the words within brackets at the end of above form are inserted a 10s. stamp is required; otherwise a penny stamp will be sufficient. It is often found convenient to name several persons in the alternative as above, lest any one should be absent.

Section 102 of the Stamp Act, 1870, provides as follows:—

- (1.) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting paper, hereby respectively charged with the duty of one penny, is to specify the date upon which the meeting at which it is intended to be used is to be held, and is to be available only at the meeting so specified, or any adjournment thereof. [This paragraph does not apply where a 10s. duty is paid as above.]
- (2.) The said duty of one penny may be denoted by an adhesive stamp which is to be cancelled by the person by whom the instrument is executed. [As to mode of cancelling, see *supra*, p. 17.]
- (3.) Every person who makes, or executes, or votes, or attempts to vote under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall forfeit the sum of fifty pounds.
- (4.) Every vote given or tendered under the authority or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall be absolutely null and void.
- (5.) And no such letter, or power of attorney, or voting paper shall, on any pretence whatever be stamped after the execution thereof by any person.

No member entitled to vote, &c., while call due to company.

84. No member shall be entitled to be present, or to vote on any question, either personally or by proxy or as proxy for another member, at any general meeting, or upon a poll, or be reckoned in a quorum, whilst any call or other sum shall be due and payable to the company in respect of any of the shares of such member.

See the *Cambrian, &c., Co.*, W. N. 1876, 6.

Resolution in writing of directors, in certain cases, to be equivalent to resolution of general meeting.

85. Any resolution passed by the directors, notice whereof shall be given to the members in the manner in which notices are hereinafter directed to be given, and which shall, within one month after it shall have been so passed, be ratified and confirmed in writing by members holding in the aggregate three-fifths of the issued capital of the company, shall be as valid and effectual as a resolution of a general meeting, but this clause shall not apply to a resolution for winding up the company, or to a resolution passed in respect of any matter which by the statutes or these presents ought to be dealt with by special or extraordinary resolution.

This clause is now commonly inserted, and is found very useful. It is sometimes next to impossible to get a general meeting together, and business is obliged to be left in abeyance meantime.

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DIRECTORS.

86. The number of the directors shall not be less than [five] nor more than [seven].

Number of directors.

It is seldom that a large number of directors is a benefit to a company; if the company is a large one, and there is much business to be done by the Board, it may be necessary in order that there may be no difficulty in securing a quorum; but in many companies the powers and duties of the Board are for the most part delegated to a managing director or manager, and where this is the case, there is no reason for having a large number of directors. Even where this is not done, it is found that a moderate number are, by reason of the increased individual responsibility, more likely to work.

87. The persons hereinafter named shall be the first directors, that is to say :

First directors.

A. B., of —,

C. D., of —, [and so forth,]

and they shall hold office until the ordinary meeting in the year —.

It is usual to appoint the directors by the articles, but the plan adopted in Table A. is sometimes preferred, namely, to provide that : 87a. "The first directors shall be named by the subscribers of the memorandum of association." See other forms, Miscellaneous Clauses, Forms 21 and 22.

Of course, in such case, the appointment must be made by resolution passed at a duly called meeting of the subscribers, at which, at any rate, a majority are present. *Hombeach Coal Co., Limited, v. Teague*, 5 H. & N. 151; 29 L. J. Ex. 137; 8 W. R. 264.

Where the subscribers are to appoint the directors, the articles generally declare that : "Until the first directors shall have been appointed, the subscribers to the memorandum of association shall be deemed to be the directors." This does not enable a meeting at which so many of the subscribers are present as would constitute a quorum for a meeting of directors under Clause 103, to pass a resolution binding on the absent subscribers. *Hombeach, &c., Co. v. Teague, ubi supra*. Having regard to this case, it might be expedient to add to Clause 87a, the words "or a majority of them."

88. The directors shall have power to appoint any other persons to be directors at any time before the ordinary general meeting, to be held in the year —, but so that the total number of directors shall not at any time exceed the maximum number, fixed by Clause 86 hereof.

Power for directors to appoint additional directors.

Prec. I.

This clause is very commonly inserted, and is found convenient, especially where less than the maximum number are appointed by the articles. Although it is often done, it is more than doubtful whether, under such a clause, or under Clause 100, *infra*, p. 179, directors can be appointed in pursuance of a contract with some person or company for the purpose of giving such person or company a voice in the management. See *Stace and Worth's Case*, 4 Ch. 682; *James v. Ecc*, L. R. 6 H. L. 189. See further, *infra*, introductory notes to "Amalgamation."

Qualification of directors.

89. The qualification of every director shall be the holding in his own right registered shares or registered stock of the nominal value of *l.*

It has become not uncommon now to omit the qualification clause. It affords very little real security to shareholders, and sometimes prevents an eligible man from accepting office. No qualification is required by Table A.

It was decided in *Brown's Case*, 9 Ch. 102, that a clause as above does not bind a director to take his qualification shares from the company. It will be sufficient, if, within a reasonable time after appointment, he acquire the necessary shares in any other legal mode by which shares can be acquired, *e.g.*, by purchase in the market, by transfer from a friend, or otherwise.

In *Miller's Case* it was held that while a director has a reasonable time to acquire his qualification, the time, at any rate, expires when he acts, and he thereupon becomes bound to take the shares from the company. *Miller's Case*, 3 Ch. Div. 661.

See also *Brown's Case*, *ubi supra*; *Jenkins' Case*, W. N. 1876, 29; *Stephenson's Case*, 45 L. J. Ch. 488; W. N. 1876, 159; *Buckley*, 45; *De Ruignee's Case*, W. N. 1876, 257; W. N. 1877, 35.

If, before a reasonable time has elapsed, the director withdraw from the company, he will not be under any obligation to take or otherwise acquire the qualification shares. *Karuth's Case*, 20 Eq. 506.

Sometimes the following clause is used :—

"Every member holding not less than shares shall be eligible as a director, provided that all calls made on his shares shall have been paid."

Such a clause does not apply to directors appointed by the articles, *Forbes' Case*, 8 Ch. 768, but to those subsequently appointed. *Stephenson's Case*, 45 L. J. Ch. 488.

The following is another form used :—

"Every director shall, at the time of his appointment and thenceforth during his continuance in office, hold in his own name and for his own sole benefit at least shares in the company." See also, *infra*, Miscellaneous Clauses, Form 24.

Whether the acts of a director who has not been duly appointed, or who is disqualified, are void, must depend on the circumstances of the case. Clause 110, *infra*, and Section 67 of the Act (see *infra*, p. 183), will apply in most cases, but only as to acts done before the defect or disqualification is shown. *Hallons v. Fernie*, 3 Ch. 467; *Murray v. Bush*, 6 H. L. 58; *Bridport, &c., Co.*, 2 Ch. 191. And not, it would seem, in favour of any person at the time of the act done having notice of the defect or disqualification. See also the case of the *Royal British Bank v. Thurgand* and other cases, *infra*, Miscellaneous Clauses, Form 42.

90. A director may retire from his office upon giving one month's notice in writing to the company of his intention so to do, and such resignation shall take effect upon the expiration of such notice.

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Power for
director to
retire.

Instead of the above clause, the following is sometimes used :—

90a. A director may at any time give notice in writing of his wish to resign, by delivering such notice to the chairman of the directors, or the secretary, or leaving it at the office of the company, or by tendering his written resignation at a meeting of the directors, and on the acceptance of his resignation by the directors, but not before, his office shall become vacant.

It is generally deemed expedient to provide expressly for resignation of directors. Clause 90 is very commonly used, but Clause 90a is sometimes preferred, in order that a company may not be inconvenienced by the sudden retirement of several directors.

There can be little doubt that even where no express power to resign is given, a director has an implied one. See *Maitland's Case*, 4 De G. M. & G. 769. If directors were to be regarded as trustees, the rule would apply that a trustee can only retire under a power, or by the consent of the parties interested. But it is submitted that a director is only a trustee as regards the powers and duties annexed to his office, and that the office is merely that of a manager or agent of the company. See *Know v. Gye*, 5 H. L. 676; *Parker v. McKenna*, 10 Ch. 96; *Ottoman Bank v. Farley*, 17 W. R. 761; Thring, 120; and there is no doubt that an agent can put an end to his agency on giving proper notice. Russell on Agency, 2nd ed., 253; Story on Agency, 8th ed., 673.

It may be observed that Table A. contains no clause as to resignation.

In practice it is always assumed that a director can retire *mero motu*, and the object of a clause is to fix the length of notice or to restrict the right.

91. The directors shall be paid out of the funds of the company by way of remuneration for their services the sum of —*l.* per annum, which sum shall be divided among them in such proportions and manner as the directors may determine.

Remuneration
of directors.

This is a very common clause. Sometimes it is altered thus : " Among them in proportion to their respective attendances at board meetings."

In some cases the clause runs : " Such sum as the company in general meeting may from time to time determine, which sum shall, &c."

The following is another form sometimes adopted :—

"The remuneration of each director for his services shall be the sum of *l.* per annum ;" *or*,

"The remuneration of the directors shall be the sum of *l.* apiece for each attendance at a meeting of the directors."

In addition to fixed remuneration as above, the directors are not uncommonly given a share in or commission on the profits. See *infra*, Miscellaneous Clauses, Forms 7 and 8.

Directors are not entitled to remuneration, except by virtue of the regulations of the company. *Dunston v. Imperial, &c., Co.*, 3 B. & Ad. 125. But where the articles fix remuneration as above, the directors

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will have a right of action in respect thereof, *Orton v. Cleveland Firebrick Co.*, 3 H. & C.; and may pay themselves out of the funds of the company. Unless the articles provide that the fees shall be paid out of profits only, there is nothing to prevent their being paid out of capital. *Harvey Lewis' Case*, 26 L. T. 673. In that case the articles provided: "That the directors might yearly distribute among themselves, as remuneration for their services, such sum as should be equal to one-tenth part of the profits of the company for the last preceding year, provided always that there should be yearly distributed among such directors as such remuneration a sum which should not be less than 100*l.* yearly for each director." No profits were ever made, and an order was made by the Master of the Rolls, whereby the directors were ordered to refund monies distributed among themselves out of capital, to the amount of 100*l.* a year, to each director. This order was reversed, on appeal, by the Lords Justices.

If the articles contain provision for remuneration, a promise by a director to give his services *gratis*, is a *nudum pactum* in the absence of some valid consideration, and therefore not binding; *Lambert v. Northern, &c., Co.*, 18 W. R. 180; at any rate, as regards the persons who were members of the company at the time of the promise. To remunerate its directors is *intra vires* a company, and therefore the rule in *Foss v. Harbottle*, *infra*, Miscellaneous Clauses, note to Form 17, prevents a minority from applying to the Court to interfere in relation to such a matter. *Lambert v. Northern, &c., Co.*, *ubi supra*.

Directors may act notwithstanding vacancy.

[91*a*. The continuing directors may act notwithstanding any vacancy in their body, so long as there remain three directors duly qualified to act.]

This clause is generally inserted where there is a fixed number of directors; for, in such case, if the number for the time being be less than the number fixed, it seems that nothing can be done until the proper number exists. *Kirk v. Bell*, 16 Q. B. See further, *infra*, p. 181. It should not, it would seem, be inserted where there is a maximum and minimum number fixed.

When office of director to be vacated.

92. The office of a director shall be vacated:—

(*a*.) If he accepts or holds any other office under the company [except that of managing director].

The words in brackets will be inserted where the articles provide for the appointment of a managing director.

In the *Iron Ship, &c., Co.*, *v. Hunt*, 3 C. P. 484, the articles contained a provision as above (*a*). A had been appointed secretary at a salary, and, whilst secretary, was elected a director and acted as such, still, however, continuing to perform the duties of the secretary. It was held that the acceptance of the office of director vacated the office of secretary, and that the subsequent performance of the duties of the latter office did not disqualify him under (*a*).

(*b*.) If he becomes bankrupt, or suspends payment, or files a

petition for the liquidation of his affairs, or compounds with his creditors. **Pres. I.**

- (c.) If he be found lunatic or become of unsound mind.
- (d.) If he ceases to hold the required amount of shares or stock to qualify him for office.
- (e.) If he is concerned in or participates in the profits of any contract with or work done for the company ; but no director shall vacate his office by reason of his being a member of any company which has entered into contract with or done any work for this company, or which is concerned in or participates in the profits of any contract with the company.

This subsection is now very commonly omitted, and a clause inserted enabling a director to contract with the company, and to be interested in profits of a contract made with the company, provided he discloses his interest. See further, *infra*, Miscellaneous Clauses, Form 26.

- (f.) If he shall absent himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors.

This subsection is sometimes inserted.

As to the validity of acts done by a disqualified director, see *infra*, Clause 110, p. 182, and *supra*, Clause 89, p. 174.

ROTATION OF DIRECTORS.

93. At the ordinary general meeting, to be held in the year —, and at every succeeding ordinary meeting, one-third of the directors, or, if their number is not a multiple of three, then the number nearest to, but not exceeding one-third, shall retire from office. Rotation and retirement of directors.

The above is a clause which is in very general use.

Table A. provides that :

"At the first ordinary meeting after the registration of the company, the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office."

But that clause is seldom adopted in its integrity. The promoters generally nominate the first directors, and it is considered only fair that they should have a reasonable time to try their policy. Of course, if the company chooses, it can at any time remove them by special resolution.

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Which directors to retire.

94. The one-third, or other nearest number, to retire at the ordinary meeting to be held in the year —, shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-third, or other nearest number, who have been longest in office shall retire.

Instead of making one-third retire as in Clause 93, *supra*, it is sometimes provided that a fixed number shall retire, and, in such case, the following clause may be used in lieu of Clause 94.

Mode of determining which directors to retire.

94a. Until all the first directors and the directors (if any) appointed by them, shall in turn have retired, the directors to retire shall, from time to time, be determined by agreement of or by lot among the directors; but afterwards the directors to retire shall be those who shall have been longest in office since their last election, and in case more than shall have been in office for the same period, then the directors to retire shall be determined by lot.

Retiring director eligible.
Vacancies to be filled up by general meeting.

95. A retiring director shall be eligible for re-election.

96. The company at any general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons to be directors.

This and the next clause are inserted in order that the number of directors may be kept up, unless specially reduced under Clause 98, *infra*.

Retiring directors to remain in office till successors appointed.

97. If, at any general meeting at which an election of directors ought to take place, the places of the retiring directors are not filled up, the retiring directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from year to year until their places are filled up, unless it shall be determined at such meeting to reduce the number of directors.

But for this clause the acts of a director who, after his office was vacated, under Clause 94, continued to act, would, subject to Section 67 of the Act (*infra*, p. 183, note to Clause 112), be void as against the members. *The Garden Gully, &c., Co. v. McLister*, 1 App. Cas. 39. Of course, as regards strangers, the principle of the *Royal British Bank v. Turquand* would apply. See *infra*, Miscellaneous Clauses, note to Form 42.

Power for general meeting to increase or reduce number of directors.

98. The company in general meeting may from time to time increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

This clause is taken from Table A.

99. The company may by special resolution remove any director before the expiration of his period of office, and appoint another [qualified] person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

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Power to remove director by special resolution.

This clause is also to be found in Table A. It is not essential, for the company can, of course, by special resolution make any alteration in its regulations. It may also be framed as follows: "The company in general meeting may," &c.

100. Any casual vacancy occurring among the directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Directors may fill up casual vacancies.

This clause is usually inserted. It would be extremely inconvenient in most cases if a general meeting of the company had to be called to fill up a casual vacancy. As to what appointments the clause does *not* warrant, see *supra*, p. 174, note to Clause 88.

101. No person, not being a retiring director, shall, unless recommended by the directors for election, be eligible for election to the office of director at any general meeting, unless he, or some other member intending to propose him, has, at least seven clear days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office, or the intention of such member to propose him.

When candidate for office of director must give notice.

This clause is found convenient and for the benefit of a company. It enables inquiries to be made as to a candidate's antecedents, &c., &c.

MANAGING DIRECTOR.

[102. The directors may, from time to time [with the sanction of a general meeting], appoint one or more of their body to be managing director or managing directors of the company, either for a fixed term or without any limitation as to the period for which he or they is or are to hold such office, and may from time to time remove or dismiss him or them from office and appoint another or others in his or their place or places.]

Power to appoint managing director.

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The words in brackets are commonly omitted. The above and the following are the usual clauses as to a managing director. It seems expedient in most cases to insert them in order to avoid the necessity of having to alter the articles. Of course the exercise of the powers contained in these clauses is optional. Not uncommonly the first managing director is appointed by the articles. See Forms, *infra*.

What provisions he will be subject to.

[102a. A managing director shall not, while he continues to hold that office, be subject to retirement by rotation, and he shall not be taken into account in determining the rotation of retirement of directors, but he shall, subject to the provisions of any contract between him and the company, be subject to the same provisions as to resignation and removal as the other directors of the company, and if he cease to hold the office of director from any cause he shall, *ipso facto*, and immediately, cease to be a managing director.]

Remuneration of managing director.

[102b. The remuneration of a managing director shall from time to time be fixed by the directors [*or by the company in general meeting*], and may be by way of salary, or commission, or participation in profits, or by any or all of those modes.]

Powers and duties of managing director.

[102c. The directors may from time to time entrust to and confer upon a managing director for the time being such of the powers exercisable under these presents by the directors, as they may think fit, and may confer such powers for such time, and to be exercised for such objects and purposes, and upon such terms and conditions and with such restrictions as they think expedient; and they may confer such powers, either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers of the directors in that behalf; and may from time to time revoke, withdraw, alter, or vary, all or any of such powers.]

These powers will be conferred by resolution of the directors. In the absence of express power to delegate, the maxim "*delegatus non potest delegare*," applies to directors, *Howard's Case*, 1 Ch. 561; *Harris' Case*, 7 Ch. 587. In the latter case there being a power to delegate, it was held that an allotment made by a committee instead of by the board of directors was valid. See the general power of delegation, *infra*, p. 181.

PROCEEDINGS OF DIRECTORS.

Meetings of directors, quorum, &c.

103. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as

they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined three directors shall be a quorum.

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As to whether a *meeting* is essential to the transaction of business, see *infra*, p. 182, note to Clause 111. Where as above (Clause 86) it is provided that there shall be a certain minimum number of directors, and the articles fix the quorum, it seems that if by vacancies the number be reduced to less than the minimum, in the absence of a clause similar to 91a, nothing can be done until the minimum number is made up. *Kirk v. Bell*, 16 Q. B. 290; Lindley, 356.

The Thames Haven Dock Co. v. Rose, 4 Man. & G. 552, is sometimes cited as an authority in some degree qualifying the decision in *Kirk v. Bell*, but it was decided *before* that case and under very special circumstances. It was an action for a call, and judgment had gone by default. The court was asked to set aside the judgment, but declined. Where directors have authority to delegate their powers, such a delegation will be presumed if one or two of the directors act for the company in a matter properly within its legitimate business. *Totterdell v. Fareham Brick Co.*, 1 C. P. 674; *Re Regent's Canal Co.*, W. N. 1867, 79; *Lyster's Case*, 4 Eq. 233; *Lyon's Case*, 35 Beav. 646.

104. A director may at any time summon a meeting of the directors.

Director may
summon
meeting.

105. Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

How questions
to be decided.

106. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

Chairman.

107. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

Power to
appoint com-
mittees and
to delegate.

This clause is generally inserted and is of great practical convenience, see *supra*, p. 180. It will be observed that the committee may consist of one member only. As to where a delegation will be presumed, see note to Clause 103, *supra*, *ad fin.*

108. A committee may elect a chairman of their meetings; if no such chairman is elected or if he is not present at the time appointed for holding the same, the members present

Chairman of
committee.

Proc. I. shall choose one of their number to be chairman of such meeting.

See another mode of providing for proceedings of committee, *infra*, Precedent V., p. 235.

Proceedings of committee.

109. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a casting vote.

When acts of directors or committee valid, notwithstanding defective appointment, &c.

110. All acts done at any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

This clause is usual. It goes rather further than Section 67 of the Act. See *infra*, p. 183. See also *County Life Ass. Co.*, 5 Ch. 288, and other cases cited in note to Clause 89, *supra*, p. 174.

Resolution without board meeting valid.

111. A resolution in writing, signed by all the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted.

This clause is now not unfrequently adopted, and is found convenient. Whether in the absence of such a clause directors can act without a board meeting has not been finally decided, but it would seem that they can. *Collie's Claim*, 12 Eq. 258; but see *D'Arcy v. The Tamar, &c.*, Co., L. R. 2 Ex. 158.

Remuneration for extra service.

[111a. If any of the directors shall be called upon to perform extra services or to make any special exertions in going or residing abroad for any of the purposes of the company or the business thereof, the company shall remunerate the director or directors so doing, either by a fixed sum or by a per-centage of profits or otherwise as may be determined, and such remuneration may be either in addition or in substitution for his or their share in the remuneration provided by Clause 91 hereof.]

This clause is sometimes inserted.

MINUTES.

Prec. I.

112. The directors shall cause minutes to be duly entered in books provided for the purpose—

Minutes to be made.

- (a) Of all appointments of officers.
- (b) Of the names of the directors present at each meeting of the directors and of any committee of directors.
- (c) Of all orders made by the directors and committees of directors.
- (d) Of all resolutions and proceedings of general meetings and of meetings of the directors and committees.

And any such minutes of any meeting of the directors, or of any committee, or of the company, if purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.

The above clause is sometimes inserted and may possibly be useful as a reminder, but, if brevity is desired it can be omitted, for Section 67 of the Act sufficiently provides for these matters. The section is as follows :—

“ Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose ; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings ; and until the contrary is proved every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.”

Even apart from the Act the clause would appear to be effectual as against any member of the company although of course not against strangers. See *Roney's Case*, 12 W. R. 816, 994 ; 4 D. J. & S. 426.

POWERS OF DIRECTORS.

113. The management of the business and the control of the company shall be vested in the directors, who, in addition to the powers and authorities by these presents expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the company and are not hereby or by the statutes expressly directed or required

General powers of company vested in directors.

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to be exercised or done by the company in general meeting, but subject nevertheless to any regulations from time to time made by the company in general meeting ; provided that no regulation shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

The above clause is usual. If it is desired to limit the authority of the directors, express provision is accordingly made, but subject thereto, the general powers of the company are almost always given to the directors. See and compare Clause 55 of Table A.

And such a general delegation is valid and effectual. Thus *In re Patent File Co.*, 6 Ch., the articles authorised the borrowing of money with the sanction of an extraordinary meeting of the company: they also contained a clause substantially the same as above. The directors over-drew the company's banking account, and being required by the bank to give security, deposited title deeds of property belonging to the company. It was held in the winding-up of the company, that the mortgage was valid. James, L.J., said (*inter alia*.) that it was "plain that, under these articles, the directors can do anything which the company could do, unless it is an act which they are specially prohibited from doing. I can find nothing in the memorandum or articles to prevent the directors from making the best terms they can with a creditor of the company by selling or pledging part of the property of the company." And Mellish, L.J., said (*inter alia*.) "The articles give to the directors the whole powers of the company, subject to the provisions of the articles and of the Companies Act, 1862, and I cannot find anything either in the Act or the articles to prohibit their making a mortgage by deposit. . . . There being nothing in the articles to prohibit the giving of such security, I am of opinion that the company can give it as well for a past debt as a future one." See also *Collie's Claim*, 12 Eq. 246.

So also *In re Anglo-Danubian, &c., Co.*, 20 Eq. 339, the articles contained express power to borrow (Clause 29), and also (Clause 66), a general delegation of powers as above. The question was, whether the directors had power to issue debentures at a discount. Jessel, M.R., held that they could: "There is nothing in these articles to limit the amount of interest, the directors might give 10 per cent., 20 per cent., or 30 per cent., and they might give that interest by way of discount. If, therefore, I went on the mere words of the 29th Clause, I should hold this was within their powers. But, looking to the 66th Clause, I cannot have any possible doubt. The directors can do anything the company can do; and as there are no regulations prescribed by the articles or the company under the 66th Clause, they may borrow on any terms they think fit."

The above clause is substantially the same as Clause 55 of Table A., and Clause 90 of the Companies Clauses Consolidation Act, 1845. In the recent case of *Hampson v. Price's Patent Candle Co.*, L. J. 45 Ch. 437; 34 L. T. 711; 24 W. N. 754, it was held that the last-mentioned clause warranted directors in granting out of the funds of the company gratuities to the workmen employed. See also *Godefroi & Shortt*, p. 72. As to when the court will and when it will not interfere in the internal management of a company, see the rule in *Foss v. Harbottle*, *infra*, Miscellaneous Clauses, note to Form 17.

114. In furtherance, and not in limitation of, and without prejudice to the general powers conferred or implied in the last preceding clause, and of the other powers conferred by these presents, it is hereby expressly declared that the directors shall be entrusted with, and exercise and perform the following powers and duties :—

Spec. I.

Specific powers given to directors.

From what is said in the note to Clause 113, it seems that the subsections of this clause, or many of them, might without danger be omitted. Nevertheless, it is usual expressly to confer all, or some of the powers contained in them, and reasons for doing so are not wanting, *e.g.*, 1. Directors like, as far as possible, to have express authority, for where express authority is given by the articles the company cannot complain that an act of the directors pursuant thereto is *ultra vires*. Thus where the articles authorised the directors to pay 6,000*l.* to the promoters of the company it was held, on demurrer, that payment without taxation was not improper. *Croskey v. Bank of Wales*, 4 Giff. 314; 9 Jur. N. S. 595. So where the articles authorised the directors to acquire a specific business "upon such terms and under such stipulations as to guarantee or otherwise as may be agreed upon," it was held that they were under no obligation to consult the company in general meeting before making the purchase, although the business was insolvent and the purchase would involve undertaking vast liabilities. *Overend & Gurney Co. v. Gibbs*, L. R. 5 H. L. 480. See also *Blakely Ordnance Co.*, 3 Ch. 159; *Bank of Turkey v. Ottoman Bank*, 14 W. R. 819; *Eley v. Positive, &c., Soc.*, 1 Ex. Div. 88.

2. It relieves the directors from responsibility, for in the absence of fraud or *crassa negligentia*, they will not be under any personal liability to the company, even though in the exercise of the powers entrusted to them they are guilty of imprudence and want of judgment which result in a great loss to the company. *Overend & Gurney Co. v. Gibbs*, *ubi supra*.

3. Mortgagees, vendors, and other persons dealing with a company like to see the powers of the directors in black and white.

- (1.) They may take such steps as they think fit to carry into effect the said agreement of the — day of —.

May carry agreement into effect.

If Clause 3, *supra*, p. 143, is inserted this should be omitted.

- (2.) They may pay the costs, charges, and expenses, preliminary and incidental to the promotion, formation, establishment, and registration of the company.

May pay preliminary expenses.

Such a power will not give a promoter a right of action, in respect of preliminary expenses, against the company. *Melhado v. Porto Alegre Ry. Co.*, 9 C. P. 503; at any rate if he is not a party to the articles. *Eley v. Positive, &c., Soc.*, 1 Ex. Div. 88. See also *Croskey v. Bank of Wales*, 4 Giff. 318, cited *supra*.

- (3.) They may, at their discretion, pay for any property or

May pay for

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property in
debentures,
&c.

rights acquired by, or services rendered to, the company, either wholly or partially in cash or in shares, bonds, debentures, or other securities of the company, and any such shares may be issued either as fully paid up or with such amount credited as paid up thereon as may be agreed upon, and any such bonds, debentures, or other securities may be either specifically charged upon all or any part of the property of the company and its uncalled capital, or not so charged.

Debentures issued by a company under a general power of borrowing in part discharge of existing liabilities are valid. *Inns of Court Hotel Co.*, 6 Eq. 82. See also opinion of Blackburn, J., in *Webb v. Herne Bay Commis.*, 5 L. R. Q. B. 654.

If paid-up shares are issued under the above power, a contract in relation thereto may be necessary under Section 25 of the Act of 1867. See further, *supra*, p. 6.

May secure
contracts by
mortgage.

- (4.) They may secure the fulfilment of any contracts or engagements entered into by the company, by mortgage or charge of all or any of the property of the company and its unpaid capital for the time being, or in such other manner as they may think fit.

May appoint
officers, &c.

- (5.) They may appoint, and at their discretion remove or suspend, such managers, secretaries, officers, clerks, agents, and servants for permanent, temporary, or special services, as they may from time to time think fit, and may determine their duties and fix their salaries or emoluments, and may require security in such instances and to such amount as they think fit.

May restrict
right to
transfer
shares.

- (6.) They may attach to any shares, to be issued as the consideration or part of the consideration for any contract with, or property acquired by, the company, or in payment for services rendered to the company, such conditions as to the transfer thereof as they think fit.

It is sometimes found expedient to place a restriction on the right of transfer, *e.g.*, where a large number of shares are issued to a vendor. Of course it must be by agreement, and such an agreement will be valid on the principle in *Ashton Vale Iron Co. v. Abbot*, W. N. 1876, 119.

See also *Gray's Case*, 1 Ch. Div. 664.

May appoint
trustees.

- (7.) They may appoint any person or persons to accept and hold in trust for the company any property belonging

to the company, or in which it is interested, and may execute and do all such deeds and things as may be requisite to vest the same in such person or persons.

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- (8.) They may institute, conduct, defend, compound, or abandon any legal proceedings by and against the company, or its officers, or otherwise concerning the affairs of the company, and also may compound and allow time for payment or satisfaction of any debts due, and of any claims or demands by or against the company. May bring and defend actions, &c.
- (9.) They may refer any claims or demands by or against the company to arbitration, and observe and perform the awards. May refer to arbitration.

As to arbitration, see further, *supra*, p. 33, and *infra*, p. 194.

- (10.) They may make and give receipts, releases, and other discharges, for money payable to the company, and for the claims and demands of the company. May give receipts.

And such receipts will be effectual even though the acting directors are not directors *de jure*. *Mahoney v. East Holyford Mining Co.*, 7 H. L. 869. See *infra*, Miscellaneous Clauses, notes to Form 42.

- (11.) They may act on behalf of the company in all matters relating to bankrupts and insolvents. May act for company in bankruptcy.
- [11a. They may establish branch offices, and appoint agents, for the transaction of the business of the company, either in the United Kingdom or elsewhere, upon such terms and with such power and authorities as the directors think expedient.] May establish branch offices and appoint agents.

The above is sometimes inserted.

- (12.) They may invest any of the monies of the company not immediately required for the purposes thereof, upon such securities and in such manner as they may think fit, and they may, from time to time, vary or realise such investments. May invest monies.

A power to invest in securities does not warrant an application for a number of shares in a proposed company with a view to promoting it. *Joint-Stock Discount Co. v. Brown*, 3 Eq. 139; 8 Eq. 381. See also *supra*, p. 107.

Spec. I.

May give per-
centage to
director, &c.

[12a. They may give to any director, officer, solicitor, or other person employed by the company, an interest in any particular business or transaction, either by way of a commission on the gross expenditure thereon, or otherwise, or a share in the general profits of the company, and such interest, commission, or share of profits, shall be treated as part of the working expenses of the company.]

The above clause, which has now become very common, will not be inserted unless paragraph (c) of Clause 92. *supra*, p. 177, is cancelled, and Miscellaneous Clauses, Form 26, inserted in the articles. An interest in profits is often found to render the services of an agent more beneficial to his employer. Apart from a special power, a person standing in a fiduciary relation to the company could not be given such an interest by the board. See further, *infra*, Miscellaneous Clauses, notes to Form 26.

May establish
reserve fund.

(13.) They may, before recommending any dividend, set aside, out of the profits of the company, such sum as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for repairing, improving, and maintaining any of the property of the company, and for such other purposes as the directors shall in their absolute discretion think conducive to the interests of the company; and they may invest the several sums so set aside upon such investments as they may think fit, and may, from time to time, deal with and vary such investments, and dispose of all or any part thereof for the benefit of the company, and they may divide the reserve fund into such special funds as they think fit.

There can be little doubt that a company can by special resolution provide for the creation of a reserve fund. *Binney v. Ince Hall, &c., Co.* 35 L. J. Ch. 363. But of course the regulations may be so framed that the whole profits must be divided from time to time. *Stringer's Case*, 4 Ch. 494.

May make
byelaws.

(14.) They may, from time to time, make, vary, and repeal byelaws for the regulation of the business of the company, its officers and servants, or the members of the company, or any section thereof.

Persons dealing with a company are deemed to have notice of the memorandum and articles of association, but not of byelaws made by the directors. *Royal Bank of India's Case*, 4 Ch. 252.

- (15.) They may enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on behalf of the company as they may consider expedient for or in relation to any of the matters aforesaid, or otherwise for the purposes of the company. Prec. I.
May make contracts, &c.

There can be little doubt that such a clause as above is a sufficient authority to the directors to vary contracts expressly adopted by the articles. See and consider *Sahlgreen & Carrall's Case*, 3 Ch. 323. See *supra*, p. 144.

SOLICITORS.

[114a. Messrs. —, of —, shall be the solicitors of the First solicitor. company.]

In a recent case the articles of the company provided that, "Mr. A. B., of —, shall be the solicitor of the company, and shall transact all the legal business of the company, including parliamentary business, for the usual and accustomed fees and charges, and shall not be removed from his office unless for misconduct." Mr. A. B. was employed by the company after its incorporation, but there was no evidence of any agreement to employ him on the terms mentioned in the articles. He was not a subscriber to the articles, but he was a member of the company. It was held that the articles did not constitute a contract between the company and Mr. A. B., and that he could not sue the company for refusal to employ him. *Eley v. Positive Ass. Soc.*, 1 Ex. Div. 20; S. C. on App. 88. In the Exchequer Division the court was also of opinion that the employment was intended to be permanent, and that the articles were not a sufficient agreement in writing within Section 4 of the Statute of Frauds.

Under the Attornies and Solicitors Act, 1870 (33 & 34 Vict. c. 28), solicitors may make special agreements, *in writing*, with their clients as to remuneration, *e.g.*, by a gross sum, commission, or salary. The solicitor of a company is very commonly appointed on an agreement under which his remuneration shall in part consist of a fixed salary. Any such agreement ought to be in writing under the above Act. An agreement within the above Act must be signed by the client or else it is void. *Re Lewis. Ex parte Munro*, 1 Q. B. Div. 727. In the case of a company it should be under the seal or signed by some person on behalf of the company. See *supra*, p. 15.

It must be borne in mind that no action can be brought on any such agreement, "but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside without suit or action, on motion or petition of any person or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business or any part thereof was done, or a judge thereof, or, if the business was not done in any court, then when the amount payable under the agreement exceeds fifty pounds, by any superior court of law or equity or a judge thereof; and where

Prec. I.

such amount does not exceed fifty pounds, by a judge of a county court which would have jurisdiction in an action upon the agreement." Section 8 of the Act.

Upon any such motion or petition, if the agreement appears to be fair it may be enforced or otherwise set aside. Section 9.

The Act does not permit of an agreement which savours of maintenance or champerty. Section 11. See also *In re Attornies and Solicitors Act, 1870*, 1 Ch. Div. 373; *Jennings v. Johnson*, L. R. 8 C. P. 425.

SECRETARY.

First secretary.

[114*b*. Mr. — of —, shall be secretary to the company.]

See note to Clause 114*a*, and see *supra*, p. 69.

Substitute.

[114*c*. The directors may appoint a temporary substitute for the secretary, who shall, for the purposes of these presents, be deemed to be the secretary.]

DIVIDENDS.

Payment of dividends.

115. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members [in proportion to their shares].

The above is the ordinary mode of dividing the profits. But, of course, it will require to be modified if there are different classes of shares. Where the original capital includes preference shares, the provisions as to the rights of the holders are generally stated in clauses near the beginning of the articles, and sometimes in this part. See *supra*, p. 146, and *infra*, Miscellaneous Clauses, Forms 7 and 8.

Where the former plan is adopted, the words in brackets above, may be omitted, and the following words added, viz.: "according to their rights and interests in the profits."

The following is a clause sometimes used:—

"Subject to any preference or priority to which any particular class of shares may be entitled, all dividends shall be paid to the members in proportion to the shares held by them respectively."

Sometimes the clause runs: "In proportion to the amount paid upon the shares held by them respectively."

Restriction on amount of dividend.

[115*a*. No larger dividend shall be declared than is recommended by the directors (but the company in general meeting may declare a smaller dividend).]

The above clause is commonly used, sometimes with, sometimes without the words in brackets.

Dividend to be paid out of profits only.

116. No dividend shall be payable except out of the profits arising from the business of the company.

This clause is almost always inserted. It is not necessary, for the pay-

ment of dividends out of capital is, in effect, a reduction of capital, which can only be effected under the Act of 1867 ; but it is useful as a reminder.

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The Court will, at the suit of any member of the company, prohibit the payment of dividend out of capital. *McDongall v. Jersey, &c., Co.*, 2 H. & M. 528 ; 12 W. R. 1142 ; *Bloxam v. Metropolitan Ry. Co.*, 3 Ch. 337 ; but not at suit of a mere simple contract creditor. *Mills v. Northern, &c., Co.*, 5 Ch. 621.

If, however, a company have paid for things, properly chargeable to capital, out of revenue, they are entitled to recoup the revenue account, at a subsequent time, out of capital ; and may, if necessary, raise fresh capital, under their borrowing powers, for that purpose. *Mills v. Northern, &c., Co.*, *ubi supra*.

As to the mode in which a statement of profits is to be arrived at, see Lindley, 813 ; *Stringer's Case*, 4 Ch. 475 ; *Rance's Case*, 6 Ch. 104 ; *Binney v. Ince Hall, &c., Co.*, 35 L. J. Ch. 363.

Where capital has been illegally paid to members, they will be compelled to repay the amount. *Holmes v. Newcastle, &c., Co.*, 1 Ch. Div. 682.

Directors paying dividends out of capital may be compelled to refund the whole amount. *Evans v. Coventry*, 8 D. M. & G. 835 ; 25 L. J. (Ch.) 501 ; Lindley, 815.

In a winding up, a director may, under Section 165 of the Act, be compelled to repay a bonus or dividend improperly paid to him out of capital. *Stringer's Case* and *Rance's Case*, *ubi supra*.

It seems that there may be cases in which dividends on preference shares can legally be paid out of capital. *Bardwell v. Sheffield, &c., Co.*, 14 Eq. 517.

As a company cannot directly pay dividends out of capital, it cannot do so indirectly ; *e.g.*, by entering into a contract with another company, one of the terms of which is, that the latter shall pay interest on the capital of the former. *James v. Ere*, 6 H. L. 335.

[116a. The declaration of the directors as to the amount of the net profits of the company shall be conclusive.]

What to be deemed net profits.

This clause is common, and is found useful.

117. The directors may from time to time pay to the members on account of the next forthcoming dividend such interim dividends as in their judgment the position of the company justifies.

Interim dividends.

The above clause is now very commonly inserted. It is, of course, liable to abuse.

118. The directors may deduct from the dividends payable to any member all such sums of money as may be due and payable by him to the company on account of calls, instalments, or otherwise.

Debts may be deducted.

Prec. I.

Power to retain dividends or shares of infant, lunatic, &c.

[118a. The directors may retain the dividends payable upon registered shares or registered stock in respect of which any person is, under Clause 30 hereof, entitled to become a member, or which any person under that clause is entitled to transfer, until such person shall become a member in respect of such shares or stock, or shall duly transfer the same.]

This clause is occasionally inserted, and may be found convenient for the purpose of ridding the register when desirable of the name of a deceased or incapacitated member. It is, of course, optional.

How dividends to be paid.

119. Every dividend shall be paid by cheques on the bankers, which shall be delivered or sent by the secretary to the members.

Dividend to joint holders.

120. In case several persons are registered as the joint holders of any share or stock, any one of such persons may give effectual receipts for all dividends and payments on account of dividends in respect of such share or stock.

Notice of dividend.

121. Notice of the declaration of any dividend, whether interim or otherwise, shall be given by advertisement, and also to the holders of registered shares and registered stock in manner hereinafter provided.

Unclaimed dividends.

122. All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the directors for the benefit of the company until claimed, and all dividends unclaimed for five years after having been declared may be forfeited by the directors for the benefit of the company. No dividend shall bear interest as against the company.

ACCOUNTS.

Accounts to be kept.

123. The directors shall cause true accounts to be kept of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure takes place, and of the assets, credits, and liabilities of the company.

Where to be kept.

124. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit.

Inspection by members.

125. The directors shall from time to time determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounts and books of the

company, or any of them, shall be open to the inspection of the members ; and no member shall have any right of inspecting any account or book or document of the company, except as conferred by statute or authorised by the directors, or by a resolution of the company in general meeting.

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The above clause is not uncommonly used. Few companies allow members free access to the books.

Where a right of inspection is given as regards "the books, wherein the proceedings of the company are recorded," a member has no right to inspect the minute book of proceedings of directors. *Reg. v. Mariquita, &c., Co.*, 1 E. & E. 289.

See also *Metropolitan, &c., Bank, Ex parte Davis*, 16 W. R. 668.

A right of inspection given by the articles ceases when the voluntary winding up begins. *Yorkshire, &c., Co.*, 9 Eq. 650 ; 18 W. R. 541.

Where a winding-up order has been made, Section 156 of the Act applies, under which the Court has express power to permit inspection by creditors or contributories. See Buckley, 292.

Table A. provides as follows :—

"The books of the company shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to time and manner of inspecting the same, that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business."

See another form, *infra*, Miscellaneous Clauses, Form 39 ; and see also Table A., Clause 78, *infra*, p. 247.

126. At the ordinary meeting in every year the directors shall lay before the company a statement of the income and expenditure, and a balance-sheet, containing a summary of the property and liabilities of the company made up to a date not more than four months before the meeting, from the time when the last preceding statement and balance-sheet were made, or, in the case of the first statement and balance-sheet, from the incorporation of the company.

Annual statement and balance-sheet.

127. Every such statement shall be accompanied by a report of the directors as to the state and condition of the company, and as to the amount which they recommend to be paid out of the profits by way of dividend or bonus to the members, and the amount (if any) which they propose to carry to the reserve fund, according to the provisions in that behalf hereinbefore contained ; and the statement, report, and balance-sheet shall be signed by two directors, and countersigned by the secretary.

Annual report of directors.

By 24 & 25 Vict. c. 96, s. 84, directors keeping fraudulent accounts, or publishing fraudulent statements, are guilty of a misdemeanour.

Pres. I.

Copy to be
sent to mem-
bers.

128. A printed copy of such balance-sheet and report shall, seven days previously to the meeting, be served on the holders of registered shares and registered stock in the manner in which notices are hereinafter directed to be served.

AUDIT.

Accounts to be
audited
annually.

129. Once at least in every year, the accounts of the company shall be examined, and the correctness of the statement and balance-sheet ascertained by one or more auditor or auditors.

See *infra*, Miscellaneous Clauses, Form 45, for clauses providing for audit committee in lieu of these clauses.

Appointment
and remunera-
tion of
auditors.

130. The first auditor or auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company at the ordinary meeting in each year. The remuneration of the auditors shall be fixed by the company in general meeting. Any auditor quitting office shall be eligible for re-election.

Sometimes the first auditors are appointed by the articles.

Provision for
case of single
auditor.
Who in-
eligible as
auditors.

131. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

132. The auditors may be members of the company, but no person shall be eligible as an auditor who is interested, otherwise than as a member of the company, in any transaction thereof, and no director or other officer shall be eligible during his continuance in office.

Casual
vacancy.

133. If any casual vacancy occurs in the office of auditor, the directors shall forthwith fill up the same.

This is the usual clause. Compare with Table A. Clauses 90 and 91.

Auditors to
report on
annual state-
ment and
balance-sheet.

134. The auditors shall be supplied with copies of the statement of accounts and balance-sheet intended to be laid before the company in general meeting seven days at least before the meeting to which the same are to be submitted, and it shall be their duty to examine the same with the accounts and vouchers relating thereto, and to report to the company in general meeting thereon.

135. The auditors shall at all reasonable times have access to the books and accounts of the company, and they may in relation thereto examine the directors or other officers of the company.

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Inspection of books by auditors.

[135*a*. Every account of the directors, when audited and approved by a general meeting, shall be conclusive, except as regards any error discovered therein within three months next after the approval thereof. Whenever any such error is discovered within that period, the account shall forthwith be corrected and thenceforth shall be conclusive.]

When accounts to be deemed finally settled.

This clause is sometimes inserted.

NOTICES.

136. A notice may be served by the company upon any member whose registered place of address is in the United Kingdom, either personally or by sending it through the post in a pre-paid letter, addressed to such member at his registered place of address.

How notices to be served on members.

Notices have to be given to members in the following cases: call, Clause 18; before forfeiture, Clause 33; after forfeiture, Clause 35*a*; general meetings, Clause 64; dividends, Clause 121; accounts, Clause 128.

The register of members, to be kept pursuant to Section 25 of the Act, is to contain (*inter alia*) the addresses of the members.

As to notices to the company, the Act provides:

Section 62.—Any summons, notice, order, or other document, required to be served upon the company, may be served by leaving the same, or sending it through the post in a pre-paid letter, addressed to the company, at their registered office.

How notices to be given to company.

Section 63.—Any document to be served by post on the company, shall be posted in such time as to admit of its being delivered in the due course of delivery, within the period (if any) prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a pre-paid letter into the Post-office.

Section 64.—Any summons, notice, order, or proceeding, requiring authentication by the company, may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print. See also Section 41 of the Act.

Authentication of notices by company.

The above Sections 62—64, so far as they relate to notices, are sometimes inserted as clauses in the articles.

137. Each holder of registered shares or registered stock, whose registered place of address is not in the United Kingdom,

Address for service of members

Proc. I.
resident
abroad.

shall, from time to time, notify in writing to the company some place in England to be called his address for service, and any notice may be served by the company upon such member by sending it through the post in a pre-paid letter addressed to him at his address for service. Until such notification shall have been given, the office shall be deemed to be the address for service of such member.

It is generally deemed expedient to make special provision as to the service of notices on members resident abroad.

According, however, to the opinion of Malins, V.-C., such members are not entitled to notice. "It seems to me that the Act has reference only to shareholders who can be reached by the ordinary English post." *Union Hill Silver Co.*, 22 L. T. 400. See also Grant on Corporations, 156.

Holder of
share warrant
not entitled
to notice.

138. The holder of a share warrant shall not be entitled in respect thereof to notice of any general meeting of the company.

The holder of a share warrant is generally deprived of the right to notice of general meetings. Sometimes he is permitted to appoint an address for service, but the objection is, that the company will have no means of ascertaining when the share warrant has been parted with, and may, unknowingly, continue to send notices to a person who has ceased to be a member. If the holder of a share warrant is to be entitled to notice, the usual plan is to provide that it shall be given by advertisement. In such case, the following clause will be inserted instead of the above :—

"Any notice required to be given by the company to the holder of share warrants, shall be given by advertising the same once in a London daily newspaper."

The objection which prevents the general adoption of the plan is the publicity; companies do not like to publish notice of their private affairs.

When notice
may be given
by advertise-
ment.

139. Any notice required to be given by the company to the members, or any of them, and not expressly provided for by these presents, shall be sufficiently given if given by advertisement.

How to be
advertised.

140. Any notice required to be, or which may be given by advertisement, shall be advertised once in two London daily newspapers.

Notice to joint
holders.

141. All notices shall, with respect to any registered shares or registered stock, to which persons are jointly entitled, be given to whichever of such persons is named first in the register, and notice so given shall be sufficient notice to all the holders of such shares or stock.

142. Any notice sent by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

Pres. I.

When notice by post deemed to be served.

It is not necessary to follow literally the address on the register, provided that a substantially accurate designation of the place of abode is given. *Liverpool, &c., Co. v. Houghton*, 23 W. R. 93.

[142a. Every person who, by operation of law, transfer, or other means whatsoever, shall become entitled to any share or stock, shall be bound by every notice in respect of such share or stock which, previously to his name and address being entered on the register, shall be duly given to the person from whom he derives his title to such share or stock.]

Transferees, &c., bound by prior notices.

The above clause is not uncommon, but it is not by any means essential, and may be omitted if brevity is desired. It does not appear in Table A., nor in the Companies Clauses Consolidation Act, 1845.

[142b. Any notice or document delivered, or sent by post to or left at the registered address of any member, in pursuance of these presents, shall, notwithstanding such member be then deceased, and whether or not the company have notice of his decease, be deemed to have been duly served in respect of any registered shares or stock, whether held solely or jointly with other persons by such member, until some other person be registered in his stead as the holder or joint holder thereof, and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his or her heirs, executors, or administrators, and all persons, if any, jointly interested with him or her in any such share or stock.]

Notice valid though member deceased.

This clause is sometimes inserted, and is found useful.

[143. The signature to any notice to be given by the company may be written or printed.]

How notice to be signed.

The above is occasionally inserted.

A person may sign by stamping a fac-simile of his autograph. *Bennett v. Brumfit*, L. R. 3 C. P. 28.

144. Where a given number of days' notice, or notice extending over any other period, is required to be given, the day

How time to be counted.

Art. I. of service and the day upon which such notice will expire,
Healey, 278. shall not be included in such number of days or other period.

ARBITRATION.

(See further as to arbitration, *supra*, p. 33).

Differences to
be referred.

145. Whenever any difference arises between the company, on the one hand, and any of the members, their executors, administrators, or assigns, on the other hand, touching the true intent or construction, or the incidents or consequences of these presents, or of the statutes, or touching anything then or thereafter done, executed, omitted, or suffered in pursuance of these presents, or of the statutes, or touching any breach, or alleged breach of these presents, or any claim on account of any such breach or alleged breach, or otherwise relating to the premises, or to these presents, or to the statutes, or to any of the affairs of the company, every such difference shall be referred to the decision of an arbitrator, to be appointed by the parties in difference, or if they cannot agree upon a single arbitrator, to the decision of two arbitrators, of whom one shall be appointed by each of the parties in difference, or an umpire to be appointed by the two arbitrators.

Costs of arbit-
ration.

146. The costs of, and incident to, any such reference and award, shall be in the discretion of the arbitrator, arbitrators, or umpire respectively, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client, or otherwise, and may award by whom, and to whom, and in what manner the same shall be borne and paid.

Submission
may be made
order of
Court.

147. The submission to arbitration shall be subject to the provisions of the Common Law Procedure Act, 1854, or any then subsisting statutory modification thereof, and shall be made a rule or order of Her Majesty's High Court of Justice upon the application of either party, and such party may instruct counsel to consent thereto for the other parties.

As to arbitration, see further, *supra*, p. 33. Daniel, Ch. Pr. 1902, *et seq.* Seton on Decrees, 399, *et seq.*

SALE IN WINDING UP.

Provision for
sale under
Section 161
of the Act.

148. If at any time the liquidators of the company shall, pursuant to Section 161 of the Companies Act, 1862, and with the sanction of such special resolution as therein mentioned, sell

Prec. I.

all or any part of the property of this company to some other company in consideration of shares or of stock in that company to be issued to the said liquidators for distribution among the members, or to be issued directly to the members, or shall enter into any other such arrangement as is contemplated by the same Section, such sale or arrangement shall be binding upon all the members of this company, and the said liquidators may carry the same into effect accordingly : Provided always that if any member of this company, who has not voted in favour of such special resolution at either of the meetings held for passing the same, expresses his dissent therefrom in writing, addressed to the said liquidators, and left at the office not later than seven days after the date of the meeting at which such special resolution was passed, the said liquidators shall, at the request of such dissentient member, sell the shares, stock, or other like interest to which he would otherwise have become entitled, and shall pay to him the proceeds of such sale. Such last mentioned sale may be made in such manner as the liquidators shall think fit.

The above clause, or one of a similar character, is not uncommonly used now, and enables a company much more effectually to take advantage of Section 161 of the Act, for the purpose of effecting a reconstruction or amalgamation. According to the Act, dissenting members are entitled to be paid the value of their interests in the selling company as ascertained, in case of dispute, by arbitration. Under the above clause they are only entitled to the selling value of the shares in the purchasing company which would otherwise have been allotted to them. There is no injustice in this, for it may reasonably be assumed that a sale which is sanctioned by special resolution is fair, and at the same time it facilitates matters considerably. In some cases the clause is framed with a view to binding every member to take the shares in the purchasing company agreed to be allotted to him ; but that form is objectionable, for the sale may be in consideration of shares only partly paid up, and it is unreasonable that a dissenting member should be obliged to undertake further liabilities. See further as to Reconstruction and Amalgamation, *infra*.

Names, addresses, and descriptions of subscribers :

See *supra*, pp. 139, 97. *The number of shares taken is not to be given here.*

Dated the — day of —.

WITNESS to the above signatures :

— of —.

It is not necessary that all the subscribers should execute in the presence of the same witness. See *supra*, p. 97.

PRECEDENT II.

Prec. II. ARTICLES of ASSOCIATION of a COMPANY LIMITED by SHARES.

The Companies Acts, 1862 and 1867.

Company Limited by Shares.

Articles of Association of The — Company, Limited.

In a good many cases, articles of association are framed as in this precedent, viz., by the adoption of Table A., subject to modifications. See *supra*, p. 140.

Adoption of preliminary agreement.

1. The company shall forthwith adopt an agreement dated, &c., and made between — of the one part, and —, on behalf of the company, of the other part.

See *supra*, p. 143.

Allotment of shares.

2. The directors may allot the shares of the company on such terms and conditions as they think fit, subject, nevertheless, to the said agreement.

3. Article 10 of Table A. shall not apply.

When directors may decline to register transfer.

4. The directors may decline to register any transfer of shares upon which the company has a lien, and in case of shares not fully paid up may refuse to register a transfer to a transferee without assigning any reason therefor.

See *supra*, p. 152.

Fee on transfer.

5. A fee not exceeding 2s. 6d. may be charged for each transfer.

Lien of company on shares or stock.

6. The company shall have a first and paramount lien upon all the registered shares or registered stock of each member for his debts, &c. [*Ut supra*, p. 159, *Clause* 40.]

How lien to be enforced.

7. For the purpose of enforcing such lien the directors may sell, &c. [*Ut supra*, p. 159, *Clause* 41.]

How proceeds to be applied.

8. The net proceeds of any such sale, &c. [*Ut supra*, p. 159, *Clause* 42.]

Evidence.

9. A certificate in writing under the hands, &c. [*Ut supra*, p. 159, *Clause* 43.]

Title of purchaser.

10. Upon any such sale the directors or any two, &c. [*Ut supra*, p. 160, *Clause* 44.]

Power to

11. The company in general meeting may from time to

- time increase its capital by the creation of new shares of such amount as may be deemed expedient. **Prec. II.**
12. The new shares shall be issued upon such terms and conditions, &c. [*Ut supra*, p. 161, *Clause 49.*] increase the capital.
Power to create preference shares, &c.
13. The company may from time to time reduce its capital, &c. [*Ut supra*, p. 162, *Clause 52.*] Power to reduce capital, &c.
14. The directors may from time to time borrow at their discretion, from the directors, members, or other persons, any sum or sums of money for the purpose of the company, and may raise or secure the repayment, &c. [*Ut supra*, p. 163, *Clause 55.*] Power to borrow.
15. The first general meeting shall be held within four months after the incorporation of the company, and Article 29 of Table A. shall be modified accordingly. When first general meeting to be held.
- See supra*, p. 164.
16. The quorum for a general meeting shall be five members. Quorum.
17. The number of the directors shall not be less than — nor more than —. Number of directors.
18. The following shall be the first directors, namely, First directors.
A. B., of —,
&c. &c.
- and they shall hold office until the ordinary meeting in the year —.
19. The directors for the time being shall have power, &c. [*Ut supra*, p. 173, *Clause 88.*] Additional directors may be appointed.
20. Clauses 52, 53, and 54 of Table A. shall not apply.
21. There shall be paid to the directors by way of remuneration — *l.* per annum, which sum shall be divided among them in such proportions and manner as they may determine. Remuneration of directors.
22. At the ordinary meeting in the year — and not before, the whole of the directors shall retire from office. Rotation of directors.
23. Any resolution passed by the directors, notice whereof shall be given to the members in the manner in which notices are required to be given by the regulations of the company, &c. [*Ut supra*, p. 172, *Clause 85.*] Effect of resolution in writing of directors.
24. Mr. — shall be the first secretary of the company. Secretary.
25. The directors may from time to time pay to the members on account, &c. [*Ut supra*, p. 191, *Clause 117.*] Interim dividends.

Prec. II.	26. The directors shall cause true accounts, &c. [<i>Ut supra</i> ,
Accounts.	p. 192, <i>Clause</i> 123.]
	The provisions in Table A. as to accounts are very often modified.
Account books.	27. The books of account shall be kept, &c. [<i>Ut supra</i> ,
	p. 192, <i>Clause</i> 124.]
Inspection.	28. The directors, &c. [<i>Ut supra</i> , p. 192, <i>Clause</i> 125.]
Annual statement and balance-sheet.	29. At the ordinary meeting in every year the directors shall lay before, &c. [<i>Ut supra</i> , p. 193, <i>Clause</i> 126.]
Report.	30. Every such statement, &c. [<i>Ut supra</i> , p. 193, <i>Clause</i> 127.]
	31. Articles 78, 80, and 81 of Table A. shall not apply.
As to vacancy in office of auditor.	32. If any casual vacancy occurs in the office of auditor the directors may fill it up.
	33. Articles 90, 91, and 94 of Table A. shall not apply.
Address for service.	34. Every member whose registered place of address is not in the United Kingdom, &c. [<i>Ut supra</i> , p. 195, <i>Clause</i> 137.]
Table A. to apply.	35. Subject to the provisions hereof the regulations contained in the table marked A. in the first schedule to the Companies Act, 1862 (hereinbefore referred to as Table A.) shall apply to the company.

This clause is commonly inserted by way of reminder, but it is not necessary. See Section 15 of the Act, *supra*, p. 139.

In addition to the above clause it may be deemed desirable to insert clauses as to arbitration, *supra*, p. 198; sale in winding up, *supra*, p. 198; surrender of shares, *supra*, p. 162; division of original capital into preference and deferred shares, *supra*, p. 146, and *infra*, p. 253; enabling directors to contract with the company, *supra*, p. 177, note to *Clause* 92, subsection (e); issue of share warrants, *supra*, p. 155, &c., &c.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS.

[*Supra*, p. 139].

Dated the — day of —, 18—.

WITNESS to the above signatures [*supra*, p. 97.]

PRECEDENT III.

ARTICLES of ASSOCIATION of a COMPANY LIMITED by PREC. III.
GUARANTEE and NOT HAVING a CAPITAL DIVIDED into
SHARES.

The articles of a company limited by guarantee and having a capital divided into shares, can readily be framed from Precedent I., *supra*, p. 142. But such companies are rarely formed.

Articles of Association of the N—— Incorporated Law
Society.

[For memorandum of association, see *supra*, p. 99, and for objects clause, *supra*, p. 120.]

These articles can very easily be modified so as to suit almost any of the associations above referred to, *supra*, p. 81.

PRELIMINARY.

1. In these articles, unless there be something in the subject Interpretation.
or context inconsistent therewith,—

“The society” means “The N—— Incorporated Law Society.”

“Member” means member of the society. Member.

“The council” means the council for the time being of the society. The council.

Sometimes such a society is governed by a “committee of management” instead of by a council.

“The president,” “the vice-president,” “the treasurer,” “the secretary,” and “the auditors” mean those respective officers The president, &c.
for the time being of the society.

“Annual meeting” and “special meeting” mean respectively Annual meeting.
an annual general meeting and a special general meeting of the Special meeting.
society.

“General meeting” means a general meeting of the society, General meeting.
whether annual or special.

“Special resolution” means a special resolution of the society Special resolution.
passed in accordance with Section 51 of The Companies Act, 1862.

Proc. III. "Extraordinary resolution" means an extraordinary resolution of the society passed in accordance with Section 129 of The Companies Act, 1862.

The seal. "The seal" means the seal of the society.

The office. "The office" means the office for the time being of the society.

In writing. "In writing" means written or printed, or partly written and partly printed.

Words importing the singular number only include the plural number.

Words importing the plural number only include the singular.

Number of members. 2. For the purposes of registration, the society is declared to consist of 300 members.

See *supra*, p. 139.

Power to increase. 3. The council may, when they think fit, register an increase of members.

This clause is sometimes inserted, but it is not necessary where, as in this precedent (see *supra*, p. 184), the general powers of the association are given to the executive. See Clause 34 of the Act, as to notice of increase of members, and *infra*, p. 314.

MEMBERSHIP.

Who may become members. 4. Any solicitor in practice in N., or within twenty miles of the town hall thereof, may, subject to the following regulations, become a member of the society.

Application for membership. 5. Each candidate for membership shall sign, and deliver to the secretary, an application in the form or to the effect following :—

To the Council of the N. Incorporated Law Society.

Gentlemen,—

I desire to become a member of the N. Incorporated Law Society ; and I hereby authorise you, in the event of my being elected, to enter my name in the register of members of the society.

Dated this — day of —, 18—.

Name in full.

Address.

Signature.

6. Such application must be accompanied by a note in writing, signed by two members—the one proposing, the other seconding the candidate's election.

Prec. III.

Proposer and seconder of candidate.

7. At the next quarterly meeting of the council, which shall be held after the expiration of fourteen days from the receipt of any such application, the candidate shall be balloted for by the council, and one black ball in five shall exclude.

When candidate to be balloted for.

8. The secretary shall, seven days at least before each quarterly meeting, give notice in writing to every member of the council, stating the name and address of each candidate (if any), to be balloted for at the approaching meeting, and the names of his proposer and seconder.

Members of council to be given notice of applications for membership.

9. The candidate's name shall also be put up in the office or library of the society seven days before the meeting of the council at which he is to be balloted for.

Candidate's names to be put up in office.

This clause is sometimes inserted.

10. The rights and privileges of every member shall be personal to himself; they shall not be transferable by his own act, or by operation of law, and shall cease upon his death.

Rights of membership to be personal.

11. Any member may withdraw from the society by giving two calendar months' notice in writing to the secretary of his intention so to do, and upon the expiration of the notice he shall cease to be a member.

Power to withdraw from society.

An express power to withdraw ought to be given.

12. Any person who shall, by any means, cease to be a member, shall, nevertheless, remain liable for, and shall pay to the society, all monies which, at the time of his ceasing to be a member, may be due from him to the society.

Arrears to be paid up by withdrawing members.

SUBSCRIPTIONS AND ENTRANCE-FEES.

13. Every member shall pay to the society an annual subscription of such amount as may be from time to time fixed by the council, with the sanction of a general meeting.

Annual subscriptions.

The subscription will be a specialty debt, see *supra*, p. 145, note to Clause 7.

As to suing for monies due from a member, see *supra*, p. 150, note to Clause 19 *a*.

Pres. III.**Amount.**

When subscribers to be liable.

Liability of future members.

14. Until otherwise determined, such annual subscription shall be two guineas, and shall be payable, in advance, on the 1st day of October in each year.

15. The subscribers hereto, and any members elected on or before the 1st day of October next, shall be liable to pay the annual subscription as from that day only.

16. Any member elected after the 1st day of October next shall be liable to pay the said annual subscription as from the 1st day of October [last preceding his election ; the subscription for the current year to be paid by him immediately after his election].

Or omit the words in brackets and substitute the words "next following his election." This alteration will make the entrance fee cover the subscription for the current year.

Entrance fees.

17. An elected member shall pay to the society, immediately after his election, an entrance-fee of such amount as the council shall from time to time fix. Until otherwise determined, the entrance-fee shall be three guineas.

See note to Clause 13, *supra*, p. 205.

Elected member not to exercise privileges till payment of entrance fee, &c. Provision for default.

18. An elected member shall not be entitled to exercise any of the privileges of a member until he shall have paid all monies payable by him to the society upon his election, and if he shall, for one calendar month after his election shall have been notified to him in writing by the society, make default in such payment, he shall *ipso facto* cease to be a member.

[CALLS.]

Occasionally the articles of chambers of commerce, law societies, and other associations of a similar character [*supra*, p. 81], besides a power to increase the annual subscription, contain power for the executive to make calls to a limited extent. Every call will be a debt due to the society, *supra*, pp. 148, 150. The following clauses will serve as an example :—

CALLS.

The council may, with the sanction of a general meeting, from time to time call on the members, *pari passu*, to contribute funds for the purposes of the society or any of them, and each member shall pay every call so made to the persons, and at the times and places appointed by the council ; but no member shall be called on to pay more than 5*l*. in any one year, including the annual subscription for that year.

A call shall be deemed to have been made at the time when the resolution of the council making the same was passed.

Twenty-one days' notice shall be given of each call.

19. If any member shall neglect, for one calendar month, to pay any money due from him to the society, the council may, by notice in writing, request him to pay such money. The notice shall appoint a day and place for payment, and a copy of this clause shall be subjoined thereto. If the requisitions of such notice are not complied with, the council may suspend the privileges of such member for such period as they think fit, and if he continue in default for twelve calendar months after such notice, he shall upon the expiration of that period cease to be a member.

Proc. III.

Powers of council as regards members in arrear.

As to forfeiture, see *supra*, p. 156, *et seq.*

GENERAL MEETINGS.

20. The first general meeting shall be held within four months after the registration of the memorandum of association of the society, and subsequent general meetings shall be held once in every year, in the month of January, on such day, and at such time and place as the council may from time to time determine.

When annual meetings to be held.

See *supra*, p. 164, note to Clause 58.

21. The above-mentioned general meetings shall be called annual meetings; all other general meetings shall be called special meetings.

Annual meetings.
Special meetings.

In some cases the ordinary meetings are called "ordinary" and "extraordinary," *ut supra*, p. 165.

22. The council may, whenever they think fit, and they shall, upon a requisition made in writing by not less than ten members, convene a special meeting.

When special meeting to be called.

23. Any requisition so made by the members shall express the object of the meeting proposed to be called, and shall be left at the office of the society.

Form of requisition.

24. Upon the receipt of such requisition, the committee shall forthwith convene a special meeting, and if they do not convene a special meeting to be held within twenty-one days from the time of the requisition being so left, the requisitionists, or any ten members, may themselves convene a meeting.

How meeting on requisition to be called.

25. Every general meeting shall be held at N.

Meetings.

Proc. III.	26. Seven days' notice, at the least, of every general meeting, specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by a special meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
Notice of meetings.	
What to be deemed special business.	27. All business shall be deemed special that is transacted at a special meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the council, and the election of officers in the place of those retiring pursuant to the regulations herein contained.
Quorum.	28. At any general meeting ten members shall form a quorum.
When meeting to be dissolved and when adjourned if quorum not present.	29. If, within half an hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week, at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned <i>sine die</i> .
Chairman.	30. The president, or in his absence the vice-president, of the society shall preside as chairman at every general meeting of the society.
When members may choose.	31. If neither the president nor the vice-president be present within ten minutes after the time appointed for the meeting, the members present shall choose some one of their number to be chairman of such meeting.
As to adjournment.	32. The chairman may, with the consent of any general meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
What to be evidence that resolution passed.	33. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

34. If a poll is duly demanded, it shall be taken at such time and place, and either by open voting or by ballot, as the chairman directs, and the result of the poll shall be deemed the resolution of the meeting at which the poll is demanded. The chairman of a general meeting shall, in case of an equality of votes at the meeting, or at the poll if a poll is demanded, be entitled to a casting vote in addition to the vote or votes to which he is entitled as a member.

Prec. III.

How poll to be taken.

Casting vote of chairman.

35. Every member shall have one vote, and voting by proxy shall not be permitted.

Votes.

Voting by proxy is generally admitted. It is not uncommon to provide that the voting upon the election of officers shall be by voting papers. See *infra*, Precedent 5.

36. No member shall be entitled to vote at any meeting unless all monies due from him to the society have been paid.

When members disqualified from voting.

OFFICERS.—THE COUNCIL.

37. There shall be the following officers of the society, namely, a president, a vice-president, a treasurer, a secretary, two auditors, and twelve ordinary members of the council. The aforesaid officers shall act without remuneration.

Officers.

38. The council shall consist of fourteen members, namely, the president, the vice-president, and twelve ordinary members.

The council.

The treasurer and secretary may also be made members.

39. Until the annual meeting in the year —, the following shall be the officers of the society :—

First officers.

President	A., of —.
Vice-president	B., of —.
Treasurer	C., of —.
Secretary	D., of —.
Auditors	E., of —.
	F., of —.
	G., of —.
	H., of —.
	I., of —.
	J., of —.
Ordinary members of the council	K., of —.
	L., of —.
	M., of —.
	N., of —.
	O., of —.
	P., of —.
	Q., of —.

Prec. III.

Retirement
of officers.

40. All the officers of the society shall retire at the annual meeting in the year —, and at each subsequent annual meeting the president, the vice-president, the treasurer, the secretary, and the auditors of the society, and four ordinary members of the council shall retire.

In some cases the regulations provide that the president and vice-president shall be selected by the council out of their own body, instead of, as in these articles, vesting the right of selection in the society at large.

Which mem-
bers to retire.

41. The four ordinary members of the council to retire at the annual meeting in each year shall, unless the members of the council agree among themselves, be determined by ballot.

Sometimes it is provided that all the officers shall be elected annually.

Restrictions
on eligibility
of officers.

42. No person shall be eligible as an officer of the society who is not a member. A retiring officer shall be eligible for re-election. No member shall at the same time be treasurer, secretary, or auditor of the society and a member of the council. Any officer of the society ceasing to be a member thereof shall *ipso facto* vacate his office.

As to filling
up vacancies
in offices.

43. At each annual meeting the society shall fill up the places vacated by the retiring officers of the society.

Provisions in
case vacancies
not filled up.

44. If at any meeting at which an election of officers ought to take place, the places of the vacating officers are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating officers are not filled up, the vacating officers, or such of them as have not had their places filled up, shall continue in office until the annual general meeting in the next year, and so on from time to time until their places are filled up.

As to casual
vacancy in
office of pre-
sident.

45. If any casual vacancy shall occur in the office of president, the vice-president shall *ipso facto* become president, and the council shall thereupon elect from among the members thereof some person to be vice-president.

Council may
fill up casual
vacancies in
other offices.

46. Any casual vacancy in the council, or in the offices of treasurer, secretary, or auditors of the society, may be filled up by the council.

Meetings of
council, &c.

PROCEDURE OF COUNCIL.

47. The council shall meet quarterly, in the months of —,

—, —, and —, in each year, and at such other times as they shall appoint. The council may make such regulations as they think proper as to the summoning and holding of meetings, and for the transaction of business thereat, and they may adjourn any meeting, and may from time to time fix the quorum necessary for the transaction of business; but, until they shall otherwise determine, five members of the council shall form a quorum.

Prec. III.

48. The president alone or any two members of the council may at any time summon a meeting thereof.

Who may
summon meet-
ing of council.
Chairman.

49. The president, or, in his absence, the vice-president, shall take the chair at all meetings of the council; and if at any meeting neither of them be present within ten minutes after the time appointed for holding the same, the members present shall choose some one of their number to be chairman of the meeting.

50. Questions at any meeting of the council shall be decided by a majority of votes, and, in case of an equality of votes, the chairman shall have a second or casting vote. The voting as to the election of members of the society shall be by ballot.

How questions
to be decided
at meeting
of council.

51. The council may act, notwithstanding any vacancy in their body, so that the number be not reduced below —.

Power for
council to act
notwithstand-
ing vacancies.
Power to re-
sign office.

52. A member of the council may at any time resign by giving notice in writing to the secretary.

See supra, p. 175.

53. If any member of the council shall, without leave of absence granted by the council, be absent from the meetings thereof for a period of — consecutive months, the council may declare his office vacant, and he shall thereupon cease to be a member of the council.

When council
may declare
office of mem-
ber vacant.

See supra, p. 175, *et seq.*

POWERS OF THE COUNCIL.

54. The management of the business and the control of the society shall be vested in the council, who, in addition to the powers and authorities by these articles expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the society, and are

Powers of the
society vested
in council.

Proc. III. not hereby or by statute expressly directed or required to be exercised or done by the society in general meeting.

As to the effect of this clause, see *supra*, p. 184.

Specific
powers vested
in council.

55. Without prejudice to the general powers conferred by Clause 54 hereof, the council shall have power :

- (a.) To take or lease any buildings for the purposes of the society.
- (b.) To purchase or otherwise acquire any books, newspapers, and documents.
- (c.) To determine from time to time the conditions on which members may use the library and remove books, but so that no member not practising within the town of N. shall be allowed to remove any book from the library.
- (d.) To determine what persons (if any), not being members of the society, shall be allowed to use the library (without the privilege of removing books), and to make, and from time to time repeal and alter, rules and conditions as to such user.
- (e.) To appoint and from time to time remove a librarian, and to fix the remuneration to be paid for his services.
- (f.) To delegate, subject to such conditions as they think fit, any of their powers to committees, consisting of such member or members of the council as they think fit, and to make such regulations as to the proceedings of such committees as may seem expedient.

See note to Clause 107, *supra*, p. 181.

- (g.) To petition Parliament in the name of the society.
- (h.) To enter into such contracts and do all such acts and things as they think expedient for the purposes of the society.

ACCOUNTS.

Accounts.

56. The council shall cause true accounts to be kept of the monies received and expended by the society, and the matters in respect of which such receipt and expenditure takes place, and of the assets, credits, and liabilities of the society.

Annual
balance-sheet.

57. The accounts shall be closed on the — day of — in each year, and a balance-sheet containing a summary of the

property and liabilities of the society on that day shall be made out. **Prec. III.**

58. Seven days before each annual meeting the accounts for the year ending with the — day of — last preceding such meeting, with all vouchers and receipts, and also the balance-sheet, shall be examined by the auditors, who shall report thereon to such meeting. **Accounts to be audited.**

59. A printed copy of the balance-sheet shall, previously to each annual meeting, be sent to the members in the manner in which notices are hereinafter directed to be given. **Copy of balance-sheet to be sent to members.**

PAYMENTS TO THE SOCIETY.

60. All subscriptions, entrance-fees, and other monies payable to the society shall be received by the treasurer, whose receipt in writing shall be a sufficient discharge for the same. **Payments to be made to treasurer.**

EXCLUSION.

61. Any member who shall fail in the observance of any regulation of the society, or of any regulation or order of the council, or who shall in the judgment of the council have been guilty of any act or practice or conduct calculated to bring discredit on the profession or to lower its status, may be excluded from the society by an extraordinary resolution. Such member shall have seven clear days' notice sent him to attend the meeting. Any member so excluded shall thereupon cease to be a member, but without prejudice to Clause 12 hereof. **Exclusion.**

See *Wood v. Wood*, L. R. 9 Ex. 191.

NOTICES.

62. A notice may be served by the society upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address. **Notices.**

63. Any notice sent by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office. **As to sending notices by post.**

Names, addresses, and descriptions of subscribers.

[*Ut supra*, p. 199.]

Dated the — day of —.

WITNESS to the above signatures,

—, of —.

PRECEDENT IV.

Prec. IV. ARTICLES *of* ASSOCIATION *of* a COMPANY LIMITED *by* GUARANTEE *and* NOT HAVING a CAPITAL DIVIDED *into* SHARES.

Articles of Association of The — Incorporated Chamber of Commerce.

PRELIMINARY.

Interpretation.

1. In these articles, unless there be something in the subject or context inconsistent therewith—

The chamber.

“The chamber” means The — Incorporated Chamber of Commerce.

For the rest of this clause, see *supra*. p. 203, substituting the word “chamber” for “society” throughout, and the following may be added: “Words importing persons only shall include corporations and partnership firms.”

Number of members.

2. For the purposes of registration the chamber is declared to consist of 500 members.

MEMBERSHIP.

Who may become a member.

3. Any person, firm, or corporation, may, with the assent of the council, become a member of the chamber.

Form of application.

4. An application for admission to membership shall be made, in writing, to the secretary, and shall be in such form as the council shall from time to time prescribe.

How to be signed.

5. The application shall be signed by the candidate, or if such candidate is a corporation by some person duly authorised on its behalf.

Council may reject applications.

6. The council may at their discretion reject any application.

SUBSCRIPTIONS.

Annual subscription.

7. Every member shall pay an annual subscription of one guinea. Such subscription shall be payable on the — day of — in each year.

From what date subscribers liable.

8. The subscribers to the memorandum of association of the chamber shall be liable to pay the said subscription as from the — day of — next.

9. A newly admitted member shall, immediately after his admission, pay an entrance fee of one guinea, and shall be liable to pay the said annual subscription as from the — day of — next following his admission.

Proc. IV.
Entrance fee.

10. A newly-admitted member shall not be entitled to exercise any of the privileges of a member until he shall have paid his entrance fee ; and if he shall, for one calendar month after his admission shall have been notified to him in writing by the chamber, make default in such payment, he shall *ipso facto* cease to be a member.

Entrance fee to be paid before privileges exercised. Provision for default.

11. The council may at any time, with the sanction of a general meeting, increase or reduce the annual subscription and entrance fee.

Council may increase entrance fee and subscriptions.

12. The liability of any member for future annual subscriptions may be commuted by the following payments to the society, namely, if such member is a firm or corporation, by the payment of twenty guineas, and in any other case by the payment of ten guineas. A member may at any time commute under this clause unless and until the council suspend the operation of the clause, which they are hereby empowered to do.

As to commutation of future subscriptions.

13. A member may at his discretion increase his subscription for any year beyond the amount for the time being payable by the regulations of the chamber, and shall in respect of every additional guinea so subscribed by him be entitled to an additional vote at any general meeting of the company held during such year.

Additional subscriptions to confer votes.

DETERMINATION OF MEMBERSHIP.

14. [*Ut supra*, p. 205, *Clause 11.*]

15. The rights and privileges of a member shall be personal and incapable of transfer by the act of such member or by operation of law ; those of a corporation or firm shall cease upon its dissolution, and those of an individual member on his death.

Rights of membership to be personal.

16. [*Ut supra*, p. 205, *Clause 12.*]

17. If any member shall neglect [*supra*, p. 207].

HONORARY MEMBERS.

18. The council may from time to time admit any person to be an honorary member of the chamber. An honorary member shall not be liable to pay any entrance fee or annual sub-

Honorary members.

Prec. IV. scription, but in other respects shall be under the same liabilities, and have the same privileges as an ordinary member.

ARBITRATION.

Rules as to arbitration.

19. The council may from time to time determine the conditions and regulations upon and subject to which the chamber will act as arbitrator.

GENERAL MEETINGS.

20 to 34. [*Clauses 20—34, supra, pp. 207—9, may be adopted, substituting the word chamber for society.*]

Votes of members.

35. Every member shall (without prejudice to clause 13 hereof) be entitled to one vote.

Voting by proxy allowed.

36. Votes may be given either personally or by proxy.

37—39. [*Ut supra, p. 170, et seq., Clauses 80, 81, and 83, mutatis mutandis.*]

40. [*Ut supra, p. 172, Clause 84, ending thus: "whilst any money is due from him to the chamber."*]

Proxy of firm.

41. Any firm which is a member of the chamber shall from time to time appoint a proxy to vote on its behalf at all general meetings, and, except as proxy for the firm, no member thereof shall be entitled to be present or to vote at any general meeting.

42. [*Ut supra, p. 209, Clause 36.*]

OFFICERS—THE COUNCIL.

43—55. [*Ut supra, p. 209, Clauses 37—49.*]

56. [*Ut supra, p. 211, Clause 50, omitting last paragraph.*]

57—66. [*Supra, p. 211, Clauses 51 to 60, mutatis mutandis.*]

67 and 68. [*Ut supra, p. 213, Clauses 62 and 63.*]

Notice to firm.

69. Notice to any member of a firm which is a member of the society shall be notice to all the members of such firm.

In all the above references the word "chamber" must be substituted for "society" or "company."

EXCLUSION.

Sometimes the council is given power to exclude any member whose connection with the chamber they may think it desirable to determine. Compare Clause 61, *supra*, p. 213.

Names, addresses, and descriptions of subscribers.

[*Ut supra, p. 199.*]

Dated this — day of —.

WITNESS, &c.

PRECEDENT V.

ARTICLES of ASSOCIATION of a COMPANY with UNLIMITED Prec. V.
 LIABILITY and NOT HAVING a CAPITAL DIVIDED INTO
 SHARES.

The Companies Acts, 1862 and 1867.

Articles of Association of The — Iron Steam-ship Mutual
 Insurance Association.

See *supra*, p. 135, as to mutual companies.

1. The number of members of the company is unlimited. Number of
members.
 See *supra*, pp. 94 and 139.

2. In these presents, unless there be something in the Interpreta-
tion.
 subject or context inconsistent therewith,—

“The company” means The — Iron Steam-ship Mutual
 Insurance Association.

Also give all the definitions *ut supra*, p. 142, *et seq.*, *mutatis mutandis*,
 except the first six.

“Insure,” “insured,” “insuring,” and “insurance,” mean Insure, &c.
 respectively insure, insured, insuring, and insurance, in pur-
 suance of the regulations of the company.

“Ship,” when applied to the subject matter of insurance, Ship.
 means an iron steam-ship, or any part or share in such a ship,
 and when otherwise applied, means any steam or sailing ship
 or vessel, boat, barge, or other floating vessel of any kind.

“Owner” means and includes a sole owner, an owner in Owner.
 partnership, an owner holding separate shares in severalty,
 a part owner, a managing owner, a ship’s husband, a
 mortgagee, and a trustee of a ship.

“Loss” means a loss, collision, or other misfortune, insured Loss.
 against by the company.

“Claim” means a claim upon the company arising out of a Claim.
 loss, or, as the context may require, the monies, costs, charges,
 and expenses payable or incurred by the company in respect of
 or consequent on a loss, and the claim arising out of the same.

3. Every person shall be deemed to have agreed to become, Agreement
to insure to
constitute
membership.
 and to be, a member of the company who insures any ship in
 pursuance of the regulations of the company.

BUSINESS OF THE COMPANY.

4. The business to be carried on by the company is the

Prec. V.

Business on
mutual
system.

insurance of iron steam ships, of which the persons in whose names the insurances are effected are owners, upon the principle that while the contracts of insurance are to be contracts with the company, the premiums or payments in the nature of premiums (hereinafter called "contributions") payable in respect of the insurances are to be calculated according to the losses upon the same basis as if the assured were mutual insurers, an entrance fee, additional contributions for extra risks, and contributions towards the current expenses of the company being payable, and allowances being made in respect of each insurance according to the regulations of the company.

Proposal for
insurance.
Effect of
acceptance.

5. Every owner desirous of insuring a ship shall fill up, sign, and deliver to the company a proposal in writing in that behalf, in such form, and containing such particulars as the directors may from time to time prescribe, and shall thereby authorise the directors, if the proposal is accepted, to enter his name on the register of members of the company, and also to register the insurance in the register of insurances hereinafter mentioned. The directors may accept or reject any proposal, and their decision shall be final. The acceptance of a ship for insurance shall be deemed to be an admission of the seaworthiness of such ship at the inception of the policy, and it shall not be competent for the directors subsequently to raise any question as to or to dispute the seaworthiness of such ship, unless it can be shown that with the consent, privity, or knowledge of the assured, some act or acts have been done, or have been omitted to be done, whereby the ship has been rendered unseaworthy.

Limit of
amount to be
insured.

6. The sum insured on any ship shall not exceed 3,000*l.*, or such greater sum as the directors may from time to time determine, provided that the sum insured on any ship shall not exceed one half the value thereof.

REGISTER OF INSURANCES.

Register of
insurances.

Particulars to
be inserted
in it.

7. The secretary shall, under the direction of the directors, keep, and from time to time correct, a register of insurances.

8. The register shall contain the following particulars :—

- (1.) The name of the member effecting the insurance.
- (2.) The name of the ship.
- (3.) The sum insured.

- (4.) The date of the commencement of the insurance.
- (5.) The date on which and how the insurance expired or determined.
- (6.) The date on which the member's liability to contribute, in respect of the sum insured, to claims arising out of subsequent losses, ceased.

Prec. V.

9. The secretary shall enter, or cause to be entered, in the register of insurances immediately on a proposal for insurance being accepted, the name of the member, the name of the ship, the sum insured, and the date of the commencement of the insurance, and shall send to the member effecting the insurance a copy of the entry of the above particulars in the register.

Entries on acceptance of proposal.

10. The directors may from time to time, at the request of a member, determine any insurance, or reduce the sum insured. Every resolution pursuant to this Clause shall take effect at and from noon of the seventh day after notice in writing of the resolution is given by the secretary to the member who effected the insurance, and the register of insurances shall be altered accordingly.

Power to determine insurance.

11. The register of insurances shall be at all reasonable times open gratis to the inspection of the members, who may take extracts therefrom.

Register open to inspection.

12. The register of insurances shall be *prima facie* evidence of everything entered or contained in it.

Register *prima facie* evidence.

INSURANCES.

13. Every insurance shall be at and from noon of the 20th day of February in any year, or at and from noon of the date entered in the register of insurances, as the date of the commencement of the insurance, until noon of the 20th day of February following, at all times and in all places, with liberty to tow and be towed.

When insurance to take effect.

14. The perils to be insured against are as follows: perils of the seas, men of war, acts of God, fire, pirates, enemies, rovers, thieves, letters of mart and counter mart, jettisons, barratry of master and mariners, surprisals, takings at sea, arrests, restraints and detainerments of all kings, princes, rulers, and people, of what nature, condition, or quality soever, also in the British transport service (except risks taken by government under charter) and all other perils, losses, and misfortunes that

Perils insured against.

Art. V.	have or shall come to the hurt, detriment, or damage of the subject matter of insurance, or any part thereof.
Warranted free from capture, &c. ;	15. Every insurance shall be warranted free from capture, seizure, or damage received, consequent on being engaged in trades contraband of war, or consequent on any breach or attempted breach of blockade.
and in some cases from particular average.	16. Every insurance shall be warranted free from particular average under 1 <i>l</i> . per cent., unless the ship be stranded. And also from particular average consequent on stranding or grounding in the Suez Canal, River Danube, or on Yenikale Bar, unless the average amounts to 1 <i>l</i> . per cent.
Payments on collision.	17. If a ship insured shall come into collision with another ship and the assured shall in consequence thereof become liable to pay and shall pay any sum in respect of damages consequent thereon, either with the consent of the directors testified by writing, under the hand of the secretary, or in pursuance of the judgment of any court or of any award made upon any reference entered into by the assured with the consent of the directors, testified by writing as aforesaid, the company will pay such proportion of three-fourths of the sum so paid as the sum insured bears to the value of the ship insured, and in cases where the liability of the ship insured has been contested or referred with the consent of the directors, testified by writing as aforesaid, the company will also pay the like proportion of three-fourths of the costs thereby incurred and paid, provided that this clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay in respect of loss of life or personal injury to individuals from any cause whatever.
Form of policy.	18. Every contract of insurance shall be by a policy in such form as the directors shall from time to time determine, provided that all policies existing at any one time shall be to the same effect, except that the hull and machinery may be valued in any policy, either together or separately, as the owner may require.
Policy not to be assigned, &c., without consent.	19. No policy of insurance shall be assigned, mortgaged, or otherwise disposed of so as to pass the whole or any part of the beneficial interest in the policy without the licence and consent of the directors, testified by writing under the hand of the secretary endorsed upon the policy, and except in cases in which such licence and consent shall have been given, no disposition of a policy shall have any effect or operation.

RULES AS TO SHIPS.

Prec. V.

20. The following rules shall be observed with respect to ships insured :—

Rules as to
ships insured.

- (1.) Ships shall be surveyed in dock, or on a slip or gridiron, at least once a year, by a surveyor approved of by the directors, or if abroad, by a competent surveyor, and a report in writing of the survey signed by the surveyor shall be produced to the company, within a reasonable time after the survey.
- (2.) Once in every six months the compasses of ships shall be adjusted, or the master's and mate's certificate that the same have been found correct during the whole of the previous six months shall be produced to the company.
- (3.) Ships shall be provided with two sets of admiralty regulation lights.
- (4.) Ships, when laden with iron, ironstone, minerals, or ores of any description, between October and February inclusive, shall carry five per cent. less than the average tons weight delivered between May and September inclusive.
- (5.) Ships carrying ores (not constructed to carry water ballast) shall have trunkways or platforms properly fitted.
- (6.) Ships loading grain or seed, in bulk, shall have efficient shifting boards properly fitted.
- (7.) The space intended to be occupied by the cargo in grain-loaded ships, shall be properly bulkheaded off, so that the space for cargo may be, and the same shall be, filled.
- (8.) No ship shall sail laden with grain or seed from ports in the United States, or British North America, before the 1st day of April, or after the 1st day of September, unless at least one-fourth of the cargo be stowed in bags or barrels, and placed on the top of the grain or seed in bulk.

21. In the event of any loss happening to a ship insured at a time when any one or more of the rules contained in Clause 20 shall not be complied with, then in respect of each and every rule not then complied with, a deduction shall be made from the amount otherwise payable by the company in respect

What deductions in case of non-compliance.

Art. V.

of the loss, that is to say :—In respect of each and every breach of the said rules, numbered from 1 to 3 inclusive, a deduction of 5*l.* per cent., and in respect of each and every breach of the said rules, numbered from 4 to 8 inclusive, a deduction of 10*l.* per cent. Provided that no deduction shall be made in respect of a breach of the rule numbered 3, unless the loss is to be attributed directly or indirectly to non-compliance with that rule.

CLAIMS.**Claims.**

22. All claims shall, in the first instance, be ascertained and adjusted by a professional average stater, at Lloyd's, London, and according to the usage there, with the following exceptions, viz. :—New ships shall be allowed repairs in full (painting excepted) until they are one year old ; after that age, boilers, woodwork, sails, ropes, and stores shall be thirded ; repairs to the hulls of new ships, except as above, to be allowed in full until they are six years old ; after six years, a deduction of one sixth to be made, and after ten years, a deduction of one third. Machinery except as above to be allowed in full until three years old ; after three years, a deduction of one sixth, and after six years, a deduction of one third to be made. Extra fastening or doubling is not to be allowed as particular average, unless the ship requiring the same has been strained by stranding, and such extra fastening or doubling has been ordered to make good the damage thereby received by the surveyors of Lloyd's or Liverpool Registries, and approved by this or some other steam ship insurance association's surveyor. Painting or coating of ships' bottoms to be thirded in all cases, but no painting or coating to be allowed if it has been on six months or upwards at the time of accident. In all cases of claims for average repairs in the United Kingdom notice is to be given to the secretary before any repairs are commenced. In cases of average where stores or repairs are estimated, the same are only to be allowed when vouchers are produced to show that such repairs have been effected or the stores put on board.

As to immediate consideration of certain cases.

23. If bills of exchange are drawn at home or abroad for sums of money amounting to 1*l.* 10*s.* or upwards per ton of the gross registered tonnage of a ship insured on account of average, they shall be taken into immediate consideration by the directors, and a part thereof, proportionate to the liability

of the company in respect of the average, shall be advanced by the company (if required) to meet such bills, upon the directors being satisfied by vouchers or otherwise that such bills have been drawn on account of such average.

Prec. V.

24. Notice in writing of a claim shall be given to the secretary, and the statement of such professional average stater as aforementioned and all other papers relating to the claim shall be left for examination at the office, at least four clear days before the next meeting of the directors for the consideration of claims. And the validity of the claim and the sum, if any, payable in respect thereof shall be ascertained by the decision of the directors, or if their decision is disputed, by arbitration in manner hereinafter provided.

Notice of claim.

25. The sum allowed by the directors or awarded in respect of a claim shall be paid at such time or times as the directors, having regard to the claims upon the company, may determine, provided always that such payment shall not be delayed longer than two months from the date of the sum being allowed or awarded, as the case may be.

When sum allowed to be paid.

26. The company shall not be bound to take any notice of any interest of any person in any ship or insurance, other than the member effecting the insurance, although express notice thereof be given to the company, unless a memorandum of the name and the nature and extent of the interest of such person, signed by the member effecting the insurance, shall be endorsed on the policy, with the licence and consent of the directors testified by writing, under the hand of the secretary, also endorsed upon the policy.

Company to deal with member effecting insurance except in certain cases.

27. If an insurance is effected in the names of more persons than one, the receipt of any one of such persons for any moneys payable by the company in respect of any insurance shall be a sufficient discharge for the same.

Receipt of joint insurers.

ENTRANCE FEES, ADDITIONAL CONTRIBUTIONS, AND ALLOWANCES.

28. Every member shall pay to the company in respect of each insurance effected by him an entrance fee of such amount as the directors shall from time to time determine.

Entrance fee.

29. Every member shall pay additional contributions, in respect of ships insured by him, as are hereinafter mentioned, as follows :—

Additional contributions.

Proc. V.

- (1.) In respect of ships entering the Baltic for direct voyages as below :—

	Bound to a Port or Ports in the Gulfs of Bothnia, Livonia, or Finland.	To Lower Ports not in the Gulfs of Bothnia, Livonia, or Finland.
Between Feb. 20 and March 31, inclusive.....	5/- ½ cent. ½ voyage.	2/6 ½ cent. ½ voyage.
Between Oct. 1 and Oct. 31, inclusive.....	5/- do. do.	2/6 do. do.
Between Nov. 1 and Nov. 30, inclusive.....	10/- do. do.	5/- do. do.
Between Dec. 1 and Feb. 19, inclusive.....	20/- do. do.	10/- do. do.

- (2.) In respect of ships trading in the Baltic between the above dates, the above additional contributions for each voyage, but the rates chargeable as above shall in no case exceed 2*l*. per cent. in the aggregate, on any one policy. Ships sailing by the Sound, beyond Copenhagen, or by the Belt, when beyond 13 degrees east longitude, to be considered in the Baltic.
- (3.) In respect of ships entering the White Sea between the 1st October and 20th May, 20*s*. per cent. additional per voyage.
- (4.) In respect of ships sailing to or from British North America, or ports in United States, north of and including Philadelphia, before April 1st or after October 1st, 5*s*. per cent. additional for each transatlantic passage, in no case to exceed 30*s*. per cent. in the aggregate, on any one policy. Vessels sailing from any port to America, and having to come down the Mediterranean, the date of passing Gibraltar to be deemed the date of sailing.
- (5.) In respect of ships employed in the American coasting trade, north of and including Philadelphia, before the 1st April or after the 1st October, 15*s*. per cent. per month additional.

And shall give particulars of the voyages to the secretary on application.

The above mentioned additional contributions are to be calculated on the sums insured on the ships, and are to be paid when drawn for by the secretary.

30. Every member shall be entitled in respect of ships insured by him to the following allowances :—

Prec. V.

Allowances
to members.

- (1.) In respect of ships in a port in the United Kingdom for fifteen consecutive days, allowances at the following rates, namely—

October to March, inclusive, 10s. per cent. per month on the sum insured.

April to September, inclusive, 5s. per cent. per month on the sum insured.

- (2.) In respect of ships in a port as above for thirty consecutive days, or upwards, allowances of 50 per cent. additional upon the above rates.
- (3.) In respect of ships detained for thirty consecutive days, or upwards, for the purpose of repairs in a foreign port, allowances at the same rate as those for ships in a port in the United Kingdom for a like period.
- (4.) In respect of ships detained in a port in the United Kingdom whilst prosecuting a voyage, or in a foreign port, for the purpose of repairs, consequent upon loss, and obliged to keep their crews on board, members shall be allowed the wages paid to the crews, and 1s. 6d. per man per day for victualling, in respect of the period of detention, until the repairs are completed, provided that this allowance shall not be made in cases of particular average, from which the insurances are warranted free, and that no part of the wages of the crews shall be charged or allowed in the average account for the repairs.

CONTRIBUTIONS AND CALLS.

31. The funds required for the payment of current expenses of the company, including the allowances mentioned in Clause 30, shall be raised by the entrance fees and additional contributions mentioned in Clauses 28 and 29, and by contributions from the members in the proportions which the sums insured by them respectively bear to the amount of all the sums insured by the company at the date of the call upon the members for such contributions.

How funds
for current
expenses to
be raised.

32. The funds required for the payment of claims shall be raised by contributions from all the members, in the

How funds to
meet claims
to be raised.

- Prec. V.** proportions which the sums insured by them respectively bear to the amount of all the sums insured by the company at the respective times of the losses giving rise to the claims, provided that the member who insures a ship which is lost shall contribute not less than 4l. per cent. on any one policy on the sum insured by him thereon, exclusive of his contributions in respect of other sums insured by him on other ships.
- Directors may make calls.** 33. The directors may make calls upon the members, in respect of contributions, at such times, and in such manner, as they think fit ; and each member shall pay the amount of every call so made to the persons, and at the times and places appointed by the directors.
- When call made.** 34. A call shall be deemed to have been made at the time when the resolution of the directors making the same was passed.
- Notice of call.** 35. Seven days' notice of any call for current expenses, and twenty-one days' notice of any call to meet claims, shall be given to the members.
- Refusal to pay call, &c.** 36. Any member refusing or neglecting to pay a call shall pay interest thereon, at the rate of ten per cent. per annum until payment, and should such member not pay the amount of such call at or before noon of the fifteenth day after it shall have become due, the insurances effected by him shall expire, and the secretary shall give him notice in writing thereof, but such member shall remain liable to pay and shall pay to the company the said call and interest, and all other monies due from him to the company at noon on the said fifteenth day, and shall also be liable to contribute to all claims arising out of losses happening before noon of the said fifteenth day, though the amounts payable by such member shall not have been ascertained until after the date of such expiration.
- When unpaid contributions to be treated as a loss.** 37. If default shall be made in the payment of any contribution payable by any member in respect of any claim, the amount thereof, and of the costs, charges, and expenses paid or incurred by the association in or about endeavouring to recover the same, shall be treated as a loss, and contributed for accordingly.

LIABILITIES OF MEMBERS AND DETERMINATION OF INSURANCES.

- From what date member** 38. A member shall be liable to contribute in respect of an

insurance effected by him, to all claims arising out of losses happening at and after noon on the day of the commencement of the insurance.

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liable to contribute.

39. A member shall not be liable to contribute in respect of an insurance effected by him, to any claims arising out of the losses happening at or after noon of the day on which the insurance shall expire, or be determined, except in cases where the liability of the members to contribute is extended by the provisions herein contained to losses happening before noon of a subsequent day.

Not liable after expiration of insurance except in certain cases.

40. A member shall be liable to contribute in respect of an insurance effected by him on a ship which is lost, to all claims arising out of losses happening before noon of the fifth day after the loss of the ship.

Five days' limit.

41. A missing ship shall be considered to have been lost at noon on the date when she was last heard of, and a member shall be liable to contribute in respect of an insurance effected by him, on a ship which is missing, and to be considered lost, to all claims arising out of losses happening before noon of the tenth day after the date when she was last heard of.

Missing ships.

42. If a ship insured shall be wrecked, stranded, or sunk, and for a period of four months, within European waters, or for a period of six months in any other part of the world, shall remain so wrecked, stranded, or sunk, and during such period it shall have been found impracticable to save the ship, and after the expiration of such period, notice in writing shall be given to the secretary of the abandonment of the ship, the ship shall be considered to have been lost at noon on the date of being so wrecked, stranded, or sunk, as aforesaid. Provided that a ship which is so situated in an ice-bound port shall not be considered as coming within this clause, or to have been lost unless, and until there shall have been four months, if the port is within European waters, or six months if the port is in any other part of the world, of open water after the disaster. A member shall be liable to contribute in respect of an insurance effected by him on such ship as aforesaid, to all claims arising out of losses happening before noon of the fifth day following that on which such ship was so wrecked, stranded, or sunk, as aforesaid.

As to notice of abandonment.

43. If a ship insured shall be sold, the company shall not be liable in respect of any loss which shall happen to the ship

Sale of ship insured.
Effect.

Proc. V. after the sale. The member who effected an insurance on the ship shall give notice, in writing, to the secretary, of the sale, and the date thereof, and if he shall do so within ten days from the date of the sale, he shall not be liable to contribute in respect of the insurance, to claims arising out of losses happening at or after noon of the day following the date of the sale, otherwise he shall be liable to contribute in respect of the insurance to all claims arising out of losses happening before noon of the day following that on which he shall give such notice.

Mortgage
of ship.
Effect.

44. A ship which is mortgaged by a member shall not be, or be considered as insured, and a ship insured, which shall, after an insurance thereon is effected, be mortgaged by a member shall not continue to be, or be considered as insured against losses which shall happen to the ship after the mortgage, unless, and until the mortgagee or other persons to be approved by the directors, guarantee the payment of all contributions which are or may become due to the company, in respect of the insurance of the ship, and the directors in their discretion accept such guarantee. In the event of a ship insured being mortgaged by a member after an insurance thereon is effected, such member shall give notice, in writing, of the mortgage, and the date thereof, to the secretary, and shall be liable to contribute in respect of the insurance to all claims arising out of losses happening before noon of the day following that on which such notice, as aforesaid, shall be given.

No waiver of
clauses 42-44.

45. No knowledge or act of the directors, or secretary, shall excuse, or operate as a waiver of such written notice, as by Clauses 42, 43, and 44 respectively, is required to be given.

Effect of
death, lunacy,
&c., of
member.

46. If a member shall die, be found lunatic, become bankrupt, file a petition for the liquidation of his affairs, compound with his creditors, or stop payment, or being a woman, shall marry, the insurances effected by him or her shall expire at noon on the sixth day after the date of any such event, as aforesaid, unless the legal representative, committee, trustee, or husband of the member, or other persons to be approved by the directors, shall guarantee the payment of all contributions which are, or may become, due to the company, in respect of the insurances, and the directors, in their discretion, shall accept such guarantee.

Liability of
joint insurers.

47. If an insurance is effected in the names of more persons

than one, they shall be jointly and severally liable to pay all contributions payable to the company in respect of the insurance.

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48. A member shall not have any share or interest in the funds of the company, or otherwise in the company, capable of being transferred by assignment, operation of law, or otherwise.

Member no transferable interest in funds of company.

49. In the event of the company being wound up, the members at the date of the commencement of the winding up shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for payment of such sums as may be required to adjust the rights of the contributories among themselves, in the proportions which the sums insured by them respectively bear to all the sums insured by the company at that time, and shall be entitled to the surplus assets of the company, after payment of such debts and liabilities as aforesaid, in the like proportions.

Liability in case of winding up.
Rights as to surplus assets.

50. A member shall cease to be a member when all the insurances effected by him have expired or been determined, without prejudice to the rights and remedies of the company in respect of obligations incurred, according to the regulations of the company prior to his ceasing to be a member.

Cesser of membership.

GENERAL MEETINGS.

51. The first general meeting shall be held within four months after the registration of the company, and subsequent general meetings shall be held once in every year, in the month of January, on such day and at such hour and place as the directors may from time to time determine.

First general meeting.

52. The above-mentioned general meetings shall be called ordinary meetings, and all other general meetings shall be called extraordinary meetings.

Ordinary and extraordinary meetings.

53. The directors may, whenever they think fit, and they shall upon a requisition made in writing, by not less than ten members, convene an extraordinary meeting.

When extraordinary meeting to be called.

54. Any requisition so made by the members shall express the object of the meeting proposed to be called, and shall be left at the office.

Requisition.

- Proc. V.** 55. Upon the receipt of such requisition the directors shall forthwith convene an extraordinary meeting, and if they do not convene an extraordinary meeting, to be held within twenty-one days from the time of the requisition being so left, the requisitionists or any ten members may themselves convene an extraordinary meeting.
- When requisitionists may summon meeting.
56. Every general meeting shall be held in N——.
- Where meetings to be held.
Notice.
57. At least seven days' notice of every general meeting, specifying the day, hour, and place of meeting, and if special business is to be transacted at the meeting, the general nature of such business shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings of any meeting.
- How to be given.
58. Notice of an ordinary meeting, or of an extraordinary meeting convened by the directors, shall be given by the secretary, and notice of an extraordinary meeting convened by members, shall be given by the members convening the meeting.
- What to be special business.
59. All business to be transacted at an extraordinary meeting, and all business except the election and the remuneration of directors and auditors, and the consideration of the accounts and balance sheet of the association, and the reports of the directors and auditors respectively, to be transacted at an ordinary meeting, shall be deemed special, and no special business of which due notice has not been given shall be transacted at any general meeting.
- Quorum.
60. Except as otherwise provided by these presents, no special business shall be transacted at any general meeting unless a quorum of ten members is present at the time of the commencement of the business, and no other business shall be transacted at any general meeting unless a quorum of five members is present at the commencement of the business.
- What to be done if quorum not present.
61. If within one half-hour from the time appointed for the holding of any general meeting a quorum is not present, the meeting, if convened by or upon the requisition of members, shall be dissolved, but in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day within fourteen days thereafter, and to such time and place as the member or members

present at the expiration of an additional quarter of an hour determine.

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62. When any general meeting is adjourned, three days' notice at least of the adjourned meeting shall be given to the members by the secretary, unless the meeting adjourned was convened by members, and in that case by the members who convened the meeting, or some one or more of them.

When notice of adjourned meeting to be given.

63. If within one half-hour of the time appointed for the holding of an adjourned meeting, convened by or upon the requisition of members, a quorum is not present, the meeting shall be dissolved, but at any other adjourned general meeting the members present, whatever their number, shall have power to transact the business, and to decide all the matters which could properly have been disposed of at the meeting from which the adjournment took place if a quorum had been present thereat.

What to be done if quorum not present at adjourned meeting.

64. The chairman, or in his absence the deputy-chairman, of the directors shall preside as chairman at every general meeting of the company, but if neither the chairman nor deputy-chairman be present at the time appointed for holding the meeting, or shall be unwilling to act as chairman of the meeting, the directors (if any) present shall choose one of their own number to be chairman of the meeting.

Chair.

65. If at any general meeting a quorum is present, and the chair shall not be taken by a director within a quarter of an hour after the time appointed for the holding of the meeting, or if before the expiration of that time all the directors shall decline to take the chair, the members present shall choose one of their own number to be chairman of the meeting.

When to be taken.

66. The chairman of a general meeting, upon a resolution of the meeting, may adjourn any general meeting from time to time, and from place to place, but no business shall be transacted at any adjourned general meeting other than the business not transacted or left unfinished, and which might have been transacted at the meeting from which the adjournment took place.

Power to adjourn.

67. Every question submitted to a general meeting (except the election of directors, which shall be by voting papers) shall be decided in the first instance by a show of hands.

How question to be decided.

68. A declaration by the chairman of any meeting that a

What to be

Pres. V. resolution has been carried thereat upon a show of hands shall be conclusive, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution, unless immediately on such declaration a poll shall be demanded, in writing, by at least five members present, and entitled to vote at such meeting, but no poll shall be demanded on the appointment of a chairman, or on a question of adjournment.

evidence that resolution passed.

How poll to be taken.

69. If a poll be duly demanded, the same shall be taken at such time and place, and either by open voting or by ballot, as the chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

VOTES OF MEMBERS.

How many votes members to have.

70. In the election of directors, each member shall have one vote for every one thousand pounds insured by him ; in all other cases each member shall have only one vote.

Voting of joint members.

71. If two or more persons insure a ship as owners, the person whose name stands first in the register of members as one of the owners, or such one of them as may be appointed in writing by the others, shall be entitled to vote in respect thereof.

No proxy.

72. No member shall vote by proxy.

No vote after insurance expired.

73. No member shall vote after all the insurances effected by him shall have expired or been determined.

No vote by member in arrear.

74. No member shall be entitled to vote at any general meeting while any monies are due from him to the company and in arrear.

Casting vote.

75. The chairman of a general meeting, in the case of an equality of votes at the meeting or at the poll, if a poll be demanded, shall have a casting vote, in addition to the vote or votes to which he is entitled as a member.

76. No poll shall be demanded on the election of a chairman of a meeting or on any question of adjournment.

DIRECTORS.

Number.

77. The number of the directors, from time to time, shall be determined by the company in general meeting, but until

the company in general meeting otherwise determine, the number of the directors shall be fifteen. **Prec. V.**

78. The persons hereinafter named shall be the first directors, that is to say : **First directors.**

A. B., of, &c. [and so forth].

And they shall hold office until the 20th day of February next.

79. The directors shall have power at any time before the said 20th day of February next to appoint any additional directors, but so that the total number of directors shall not at any time exceed fifteen. **Power for directors to appoint additional directors.**

80. Every member shall be qualified to be a director, unless all the insurances effected by him shall have expired, or have been determined, or any monies due from him to the company shall be in arrear. **Qualification.**

81. The office of a director shall be vacated :—

- (1.) If he accept any other office under the company.
- (2.) If he become bankrupt, or file a petition for the liquidation of his affairs, or compound with his creditors, or suspend payment.
- (3.) If he be declared lunatic, or become of unsound mind, or incapable of performing his duties.
- (4.) If he knowingly suffer any monies due from him to the company to be ten days in arrear.
- (5.) If he cease to be a member of the company.
- (6.) If he shall be absent from the meetings of the directors, without leave of the directors, for a period of six months at any one time.

When office vacated.

82. The directors shall be entitled to receive annually, as a remuneration for their services, such sum not exceeding 500*l.* as the directors may from time to time determine, or not exceeding such sum as the company in general meeting may from time to time determine, and such remuneration shall be divided amongst the directors in such manner as they shall from time to time think fit. **Remuneration of directors.**

ELECTION OF DIRECTORS.

83. The directors shall be elected annually, and shall hold office from the 20th day of February, of the year of election, until the following 20th of February, when they shall retire from office. **Election.**

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Voting papers.

84. The directors shall be elected by voting papers, sent by the secretary to the members with the notice convening the ordinary general meeting of the company, to be returned to the secretary, filled up and signed by the members, at or before the meeting. The auditors of the company shall be the scrutineers of the voting papers, and the result of the voting shall be declared by them, in writing, to the secretary, within fourteen days from the day of such ordinary general meeting.

A voting paper requires a penny stamp. See *supra*, p. 171, note to Clause 83.

Retiring
director
eligible.

85. A retiring director, if qualified, shall be eligible for re-election, and shall be deemed to offer himself for re-election, unless he shall have given to the secretary notice of a contrary intention.

86. [*Ut supra*, p. 178, *Clause 97.*]

Power to
resign.

87. A director may, at any time, give notice in writing of his desire to resign to the secretary, and on the acceptance of his resignation by the board, but not before, his office shall be vacant.

Casual
vacancies.

88. Any casual vacancy among the directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same, if no vacancy had occurred.

89. The continuing directors may act notwithstanding any vacancy in their body.

90. No director shall take part in the consideration of any insurance proposed by him, or of his own claim, or act in any way as a director with reference thereto.

PROCEEDINGS OF DIRECTORS.

Meetings of
directors.

91. The directors shall meet together for the dispatch of business at such times and places as they think fit, and may make such regulations as they think proper for the summoning and holding of their meetings, and for the transaction of business thereat, and they may from time to time determine the quorum necessary for the transaction of business, but until they shall otherwise determine, two directors shall be a quorum.

Chairman.

92. The directors may out of their number elect a chairman and a deputy-chairman of the directors, and determine the period for which they are respectively to hold office.

93. The chairman or deputy-chairman alone, or any two directors or the secretary, may at any time summon a special meeting of the directors by giving notice in writing of the meeting, specifying the general nature of the business to be transacted thereat. **Proc. V.**
Notice of meetings.

94. All meetings of the directors shall be presided over by the chairman, or in his absence by the deputy-chairman, but if at any meeting of the directors neither the chairman nor the deputy-chairman shall be present within ten minutes of the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of the meeting. Who to preside.

95. [*Ut supra*, p. 181, *Clause* 105.]

96. [*Ut supra*, p. 181, *Clause* 107.]

97. The directors may from time to time revoke or vary the powers delegated to a committee, or impose any regulation on a committee. Power to revoke delegation.

98. The meetings and proceedings of any committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of directors, so far as the same are applicable thereto, and are not superseded by the express terms of the appointment of the committee. How proceedings of committee to be regulated.

99. [*Ut supra*, p. 182, *Clause* 110.]

MINUTES.

100. The directors, &c. [*Ut supra*, 183, *Clause* 112.]

POWERS OF DIRECTORS.

101. The management, &c. [*Ut supra*, p. 183, *Clause* 113.]

102. In furtherance and not in limitation of and without prejudice to the general powers conferred or implied by *Clause* 101 hereof, and of the other powers conferred by these presents, it is hereby expressly declared that the directors may without any further power or authority from the members do the following things :— Specific powers of directors.

- (1.) They may pay the costs, charges, and expenses of, and incidental to, or connected with, the formation and registration, or preliminary to the commencement of the business of the company, or otherwise incurred.
- (2.) They may appoint, and at their discretion may remove

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or suspend such surveyors, agents, and clerks, as they from time to time deem expedient for carrying on the business of the company, and may determine the duties and powers of such persons, and may fix their salaries and remuneration.

- (3.) They may raise or borrow in the name, or otherwise on behalf of the company, such sums of money as they from time to time think expedient, for the payment of claims.
- (4.) They may make, draw, accept, or indorse, any promissory note, bill of exchange, or other negotiable instruments for the purposes of the company, or they may authorise the secretary to do so.
- (5.) They may pay to any person having commanded any steamer or steamers insured in the company, without claim (claims for damage to machinery excepted) for two consecutive years, the company's proportion of twenty-one pounds for every such period in proportion to the sum insured.
- (6.) They may institute, &c. [*Ut supra*, p. 187, *Clause* 114, *Subsection* 8.]
- (7.) They may release any member upon the expiration or determination of all the insurances effected by him, from any liability to the company, upon such terms as they may think fit.

- (8.))
- (9.)) [*Ut supra*, p. 187, *Subsections* 9, 10, 14, and 15.]
- (10.))
- (11.))

ACCOUNTS.

103 to 108. [*Ut supra*, p. 192, *et seq. Clauses* 123—128, *mutatis mutandis*.]

AUDIT.

109 to 116. [*Ut supra*, pp. 194, 195, *Clauses* 129—135a.]

NOTICES.

How notices
to be given.

117. All notices or other documents may be served by the company or secretary upon any member, either personally or by sending the same through the post in a pre-paid letter

addressed to such member at his registered address, but a member whose registered address is out of the United Kingdom shall not be entitled to receive any notice or other document unless he shall have given notice to the secretary of an address in the United Kingdom at which he desires such service to be made, in which case the same shall be made accordingly. **Proc. V.**

118. All notices and other documents directed to be given and sent to the members, shall with respect to more persons than one, who are members in respect of an insurance effected by them in their names, be served on whichever of such persons is named first in the register of members, and notice so served shall be sufficient notice to all such persons. **Notice to jointmembers.**

119. [*Ut supra*, p. 197, *Clause* 142.]

120—122. [*Ut supra*, pp. 196, 197, *Clauses* 139, 140, and 143.]

ARBITRATION.

123. If, and whenever any difference or dispute arises between the company and any member, or any other person interested in any insurance, touching any loss or claim, such difference or dispute shall be referred to the decision of an arbitrator, to be appointed by the parties in difference, or if they cannot agree upon a single arbitrator, to the decision of two arbitrators, of whom one shall be appointed by each of the parties in difference, and an umpire to be appointed by the two arbitrators before entering upon the reference. **What disputes to be referred to.**

124. The umpire shall sit with the arbitrators, and preside at their meetings during the reference. **Umpire to sit with arbitrators.**

125. The arbitrator, arbitrators, or umpire may in case any point of law shall arise take the opinion thereon of such counsel as they or he may think fit, and may act upon any such opinion; and unless the arbitrator, arbitrators, or umpire taking such an opinion otherwise direct, the costs of and incident thereto shall be deemed to be part of the costs of the award. **Opinion of counsel may be taken.**

126. The costs of and incident to any such reference and award shall be in the discretion of the arbitrator, arbitrators, or umpire respectively who, &c. [*supra*, p. 198, *Clause* 146]. **Costs.**

127. The submission to arbitration shall be subject to the provisions of the Common Law Procedure Act, 1854, and any **Submission to be made order of court.**

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subsisting statutory modification thereof, and shall be made a rule of Her Majesty's High Court of Justice, in any Division, upon the application of either of the parties in difference, and such party may instruct counsel to consent thereto for the other parties. (See *supra*, p. 33.)

Right of
action on
policy
qualified.

128. No member or other person interested in any Insurance shall be entitled to maintain any action or other proceeding against the company upon any policy of insurance, or otherwise in respect of a claim, unless and until the claim shall have been submitted to the directors, pursuant to Clause 24 hereof, and they shall have given their decision thereon, or shall have made default in so doing, and if such decision be disputed, or such default be made, unless and until the claim shall have been referred to arbitration in manner herein provided, and the arbitrator, arbitrators, or umpire shall have made his or their award thereon, and in any event unless and until the validity of the claim and the sum, if any, payable in respect thereof, shall have been ascertained by the directors or by arbitration, and the company shall have made default in payment, according to the provisions of these presents, of the sum allowed by the directors or awarded in respect of the claim, and then only for the sum so ascertained to be payable by the company.

It is now well settled that such a clause as this bars the right of action. *Scott v. Avery*, 5 H. L. Cas. 811; 25 L. J. Ex. 308; *Edwards v. Aberavon Mutual Ship Insurance Society*, 1 Q. B. Div. 563; *Danson v. Fitzgerald*, 1 Ex. Div. 257.

The following is a copy of Table A., contained in the First Schedule to the Companies Act, 1862. See further as to Table A., *supra*, p. 139.

TABLE A.

Table A.

REGULATIONS FOR THE MANAGEMENT OF A COMPANY LIMITED BY SHARES.

SHARES.

(1.) If several persons are registered as joint-holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.

CALLS ON SHARES.

(4.) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

TRANSFERS OF SHARES.

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

Table A. (9.) Shares in the company shall be transferred in the following form :

I, A. B., of
in consideration of the sum of
pounds paid to me by C. D., of
do hereby transfer to the said C. D. the share (or
shares), numbered standing in my name in the books
of the company, to hold
unto the said C. D., his executors, administrators, and assigns,
subject to the several conditions on which I held the same at the
time of the execution hereof; and I, the said C. D., do hereby
agree to take the said share (or shares), subject to the same
conditions.

As witness our hands the day of .

(10.) The company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

TRANSMISSION OF SHARES.

(12.) The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

FORFEITURE OF SHARES.

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter during such time as the call remains unpaid serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

(18.) The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event

of non-payment at or before the time, and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

Table A.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

(22.) A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share; and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

CONVERSION OF SHARES INTO STOCK.

(23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

INCREASE IN CAPITAL.

(26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by

Table A. the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

GENERAL MEETINGS.

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

PROCEEDINGS AT GENERAL MEETINGS.

(35.) Seven days' notice at least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an

Table A.

extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting, from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

VOTES OF MEMBERS.

(44.) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting

Table A. unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal; and shall be attested by one or more witnesses or witnesses. No person shall be appointed a proxy who is not a member of the company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

I, _____ of _____ in the
 county of _____ being a member of the
 Company, Limited, and entitled to
 vote or _____ votes, hereby appoint
 of _____ as my proxy to vote for me and
 on my behalf at the [ordinary or extraordinary, as the case
may be,] general meeting of the company to be held on the
 day of _____ and at any adjournment
 thereof [*or*, at any meeting of the company that may be held
 in the year 18 ____].
 As witness my hand this _____ day of _____ 18 ____
 Signed by the said _____ in the presence of _____.

DIRECTORS.

(52.) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

POWERS OF DIRECTORS.

(55.) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles required to be exercised by the company in general meeting; subject, nevertheless, to any regulations of these articles, to the provisions of the

foregoing Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Table A.

DISQUALIFICATION OF DIRECTORS.

(57.) The office of director shall be vacated :—

If he holds any other office or place of profit under the company ;

If he becomes bankrupt or insolvent ;

If he is concerned in, or participates in, the profits of any contract with the company.

But the above rules shall be subject to the following exceptions :—

That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director ; nevertheless, he shall not vote in respect of such contract or work ; and if he does so vote, his vote shall not be counted.

ROTATION OF DIRECTORS.

(58.) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting next after the registration of the company shall, unless the directors agree among themselves, be determined by ballot ; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place ; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors ; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The company in general meeting may by a special resolution remove any director before the expiration of his period of office, and may

Table A. by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

PROCEEDINGS OF DIRECTORS.

(66.) The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(69.) A committee may elect a chairman of their meetings; if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

DIVIDENDS.

(72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years, after having been declared may be forfeited by the directors for the benefit of the company.

(77.) No dividend shall bear interest as against the company.

Table A.

ACCOUNTS.

(78.) The directors shall cause true accounts to be kept—

Of the stock in trade of the company ;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place ; and

Of the credits and liabilities of the company.

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year made up at a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters ; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profits and loss may be laid before the meeting ; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet shall be made out in every year, and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

AUDIT.

(83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors. Subsequent auditors shall be appointed by the company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in

Table A. any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(92.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may at the expense of the company employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

(94.) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

NOTICES.

(95.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter, addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

Dated the

day of

18 .

NAMES, ADDRESSES AND DESCRIPTION OF SUBSCRIBERS.

COMPANY, made up to 16

BALANCE-SHEET of the

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
I. CAPITAL.	£ s. d.	III. PRO- PERTY HELD BY THE COMPANY.	£ s. d.
Showing: 1. The Number of Shares 2. The Amount paid per Share 3. If any arrears of Calls, the nature of the Arrear, and the Names of the Defaulters 4. The Particulars of any forfeited Shares	£ s. d.	7. Immovable Property, distinguishing— (a.) Freehold Land (b.) " Buildings (c.) Leasehold " 8. Movable Property, distinguishing— (d.) Stock-in-Trade (e.) Plant The Cost to be stated with deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.	£ s. d.
II. DEBTS AND LIABILITIES OF THE COMPANY.	£ s. d.	IV. DEBTS OWING TO THE COM- PANY.	£ s. d.
Showing: 5. The Amount of Loans on Mortgages or Debenture Bonds 6. The Amount of Debts owing by the Company, distinguishing— (a.) Debts for which Acceptances have been given (b.) Debts to Tradesmen for Supplies of Stock-in-Trade or other Articles (c.) Debts for Law Expenses (d.) Debts for Interest on Deben- tures or other Loans (e.) Unclaimed Dividends (f.) Debts not enumerated above	£ s. d.	9. Debts considered good for which the Company hold Bills or other Se- curities 10. Debts considered good for which the Company hold no Security 11. Debts considered doubtful and bad Any debt due from a Director or other Officer of the Company to be sepa- rately stated.	£ s. d.
VI. RESERVE FUND.	£ s. d.	V. CASH AND INVEST- MENTS.	£ s. d.
Showing: The Amount set aside from Profits to meet Contingencies	£ s. d.	12. The Nature of Investments and Rate of Interest 13. The Amount of Cash, where lodged, and if bearing Interest	£ s. d.
VII. PROFIT AND LOSS.	£ s. d.		£ s. d.
CONTINGENT LIABILITIES.	£ s. d.		£ s. d.
Claims against the Company not ac- knowledged as Debts Money for which the Company is con- tingently liable	£ s. d.		£ s. d.

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FORM I.

The directors shall forthwith affix the seal of the company to an agreement which has been already prepared, and is expressed to be made between A. B., of the one part, and the company of the other part, and shall carry the same agreement into effect.

Forms.

The above is the form used instead of Clause 3, *supra*, p. 143, where an agreement expressed to be made between the company and the vendor has been prepared with a view to its being executed immediately after the incorporation. See *supra*, p. 2. The clause may also be framed as follows:—"The company shall forthwith enter into an agreement," &c.

Sometimes the agreement is referred to in the memorandum of association, and in such case the clause may run thus:—"The directors shall forthwith affix the seal to the agreement referred to in Paragraph of the memorandum of association of the company."

If a copy is given in the articles the clause will run thus:—"The agreement dated, &c., a copy whereof is set forth in the schedule hereto."

Sometimes the clause runs thus:—"The company shall forthwith enter into an agreement with A. B. in the words and figures following:" and the agreement is then set out in full.

Another form frequently used is this:—"The company hereby ratifies and adopts an agreement dated, &c., and the directors shall carry the same into effect."

The object in setting out the agreement in the articles or in a schedule thereto is to give the members the fullest notice of its contents, for every member is taken to know the articles of association. *Ernest v. Nicholls*, 6 H. L. Cas. 401; *Royal British Bank v. Turquand*, 6 E. & B. 437; *Lindley*, 266; *infra*, notes to Form XLII. But it is not necessary, and in the great majority of cases the agreement is not set out but merely referred to.

The authority, by the above clause given, will be a complete indemnity to the directors provided that they are not guilty of fraud or gross negligence. See *supra*, p. 185.

It may here be observed that a company cannot, except by Act of Parliament, be brought into existence, bound to perform contracts made on its behalf before its incorporation. Where the legislature incorporates a company and enacts that it shall enter into a contract, or that a contract previously made shall be binding on it, there is, of course, no question as to its liability. But the articles of association of a company formed under the Companies Act, 1862, have not this effect: they merely constitute an agreement between the members (*Pritchard's Case*, 8 Ch. 956; *Eley v. Positive, &c., Co.*, 10 Ex. Div. 88; *Melhado v. Porto Alegre Ry. Co.*, L. R. 9 C. P. 503), not an agreement between the company and the person with whom the contract has been or is to be made. They are not more effectual than a deed of settlement under 7 & 8 Vict. c. 110; and it was held that a clause in such a deed purporting to ratify and adopt a contract made on behalf of the company before its complete registration did not render the contract binding on the company. *Gunn*

Forms.

v. London, &c., Co., 12 C. B. N. S. 694. See also *Payne v. New South Wales, &c., Co.*, 10 Ex. 283; 24 L. J. Ex. 117; *Hutchinson v. Surrey Consumers, &c., Co.*, 11 C. P. 689; 21 L. J. C. P. 1.

So too a clause in the articles providing that the directors [or the company] shall purchase certain property at a specified price, or appoint some person to an office on certain terms, or pay monies to a promoter or other person, does not operate as a contract between the company and such person. It is merely an agreement between the members and an authority to the directors to enter into the contract. *Eley v. Positive, &c., Co.*, 1 Ex. Div. 88; *Pritchard's Case*, 8 Ch. 690; *Melhado v. Porto Alegre Ry. Co.*, L. R. 9 C. P. 503; *Overend & Gurney Co. v. Gibbs*, L. R. 5 H. L. 480.

At the same time, an agreement by a company to do what its promoters have undertaken it shall do, may obviously be entered into, and such an agreement, if entered into, and if not *ultra vires*, will be binding on the company. *Lindley*, 411; *Browning v. Great Central Mining Co.*, 5 H. & N. 856; 29 L. J. Ex. 399; *Pritchard's Case*, 8 Ch. 960; *Touche v. Metropolitan Co.*, 6 Ch. 671. And, in the absence of other evidence, such an agreement may be inferred if the company acts on the agreement of the promoter and takes the benefit of it. See the cases last cited.

As to the principle on which *Edwards v. The Grand Junction Ry. Co.*, 1 M. & Cr. 650, and similar cases were decided, see *Lindley*, 413, *et seq.*

FORM II.**PREFERENCE AND DEFERRED SHARES.**

Dividend on
preference
shares.

1. The holders of the preference shares shall be entitled to receive out of the profits of the company, as a first charge, a cumulative preferential dividend of 10 per cent. per annum on the amount, for the time being, paid up on the preference shares held by them respectively.

Dividend on
deferred
shares.

2. The holders of the deferred shares shall be entitled to receive out of the profits of the company, as a second charge, a cumulative dividend of 5 per cent. per annum on the nominal amount of the deferred shares held by them respectively.

Surplus
profits.

3. The surplus profits shall be divided among the members in proportion to the nominal amount of the capital held by them respectively.

Where the original capital of a company is divided into several classes of shares, it is usual to insert clauses defining the rights of the holders, as regards dividends, near the beginning of the articles of association. See *supra*, p. 146.

The clauses generally commence by a statement as to the capital, *e.g.*, "The original capital is 100,000*l.*, divided into 5000 preference shares of 10*l.* each, and 5000 deferred shares of 10*l.* each," and then proceed to define the rights. In some cases another mode is adopted, namely, to insert in that part of the articles which relates to the payment of divi-

dends a clause declaring the mode in which the profits are to be appropriated. See *infra*, Forms VII. and VIII.

As to the form of the dividend clause where there are preference shares, &c., see *supra*, p. 190, note to Clause 115.

In defining the rights of the holders of preference shares in regard to dividends, it is necessary to ascertain whether the dividend payable to them is to be non-cumulative, *i.e.*, contingent on the profits of each year being sufficient, or cumulative, *i.e.*, so that the deficiency of any one year is to be made up out of the profits of subsequent years.

Primâ facie where one class of shares is to carry a dividend at a fixed rate in preference to another class, the dividend will be cumulative, and therefore payable out of the profits whenever accruing. Thus in *Webb v. Earle*, 20 Eq. 557, preference shares had been created with a preferential dividend of 10 $\frac{1}{2}$ per cent. per annum payable half-yearly, and it was held, that if the profits of any year were insufficient to pay the dividend in full to the preference shareholders, the deficiency ought to be made good out of subsequent profits. See also *Henry v. Great Northern Ry. Co.*, 5 De G. & J. 606; 6 W. R. 87; *Matthews v. Great Northern Ry. Co.*, 28 L. J. Ch. 375; 7 W. R. 233.

Sometimes the word "cumulative" is used, *e.g.*, a "cumulative preferential dividend of 10 $\frac{1}{2}$ per cent. per annum," and there can be little doubt that the addition of that word precludes any question as to the right of the holders of preference shares to be paid arrears of dividends out of profits whenever accruing. See *Webb v. Earle*, *ubi supra*.

Not uncommonly where a dividend is intended to be cumulative it is expressly provided that the holders of the shares shall have "a right to resort to the profits of subsequent years to make up any deficiency in the dividend of preceding years." See *infra*, Form VI.

If a dividend is intended to be non-cumulative the clause must either be so framed that there is no room to contend that it is cumulative, *infra*, Forms IV., V., and VI., or it may be expressly provided that there shall be no right, in case of deficiency, to resort to subsequent profits. See *infra*, Form III.

As to giving a preference in the distribution of assets, see *infra*, notes to Form XIX. See also Forms XLVI., XLVII., XLVIII., and notes thereto.

Forms.

FORM III.

PREFERENCE AND ORDINARY SHARES.

1. The original capital of the company is 200,000 $\frac{1}{2}$., divided into 10,000 preference shares of 10 $\frac{1}{2}$. each, and 10,000 ordinary shares of 10 $\frac{1}{2}$. each. Capital
2. The holders of the preference shares shall be entitled to a preferential dividend of 10 per cent. per annum on the amount, for the time being, paid up on the preference shares held by them respectively. Dividend on preference shares
3. Such preferential dividend shall be a first charge on the profits of the company in each year, and if in any year the profits shall be insufficient to pay the same the holders of the To be non-cumulative.

Forms. preference shares shall not be entitled to have the deficiency made up out of the profits in any other year.

This is one way of making the dividend non-cumulative, see *supra*, note to Form II.

Disposition of surplus profits. 4. The surplus profits of each year, after paying the said preferential dividend, shall belong to the members in proportion to the number of shares held by them respectively.

FORM IV.

PREFERENCE AND ORDINARY SHARES.

Capital. 1. The capital, &c.

Dividend on preference shares. 2. The holders of the preference shares shall be entitled to receive out of the profits of each year a preferential dividend for such year at the rate of 6 per cent. on the amount, for the time being, paid up on the preference shares held by them respectively.

Surplus. 3. The surplus profits in each year shall belong to the holders of the ordinary shares.

Sometimes where preference shares are to carry a non-cumulative dividend it is thought better to frame the clause as above rather than expressly to provide that there shall be no claim for arrears in case of deficiency in the profits of any one year.

FORM V.

GUARANTEED PREFERENCE AND ORDINARY SHARES.

Dividend on guaranteed shares. 1. The holders of the guaranteed preference shares shall be entitled to a cumulative preferential dividend of 8 per cent. per annum on the nominal amount of the preference shares held by them respectively.

Dividend on ordinary shares. 2. Subject to the rights of the holders of the guaranteed preference shares, the holders of the ordinary shares shall be entitled to be paid, out of the surplus profits in each year, a dividend at the rate of 10 per cent. for that year on the amount credited as paid up on the ordinary shares held by them respectively.

This, it will be observed, is a non-cumulative dividend.

Application of surplus. 3. The residue of the surplus profits in each year shall belong to and be divided among the members in proportion to the number of shares held by them respectively.

4. If at any time before the — day of — 18—, the dividends paid to the holders of the guaranteed preference shares in respect thereof (whether the same shall have been paid out of the profits of the company, or under the said agreement of the — day of —), shall amount in the aggregate to 80 per cent. on the nominal amount thereof, then, and in such case, the preference hereinbefore given to such shares shall cease to exist, and thenceforth the guaranteed preference and ordinary shares shall rank *pari passu* for dividend.

Forms.

Contingent termination of preference.

It is by no means uncommon to insert such a clause as above.

FORM VI.

A AND B SHARES.

1. Until the 1st day of September, 1881, the holders of A shares shall be entitled to a preferential dividend of 6 per cent. per annum on the amount, for the time being, paid up on the A shares held by them respectively [with the right to resort to the profits of subsequent years to make up any deficiency in the dividends of preceding years], and the residue of the profits shall belong to the holders of the B shares.

Preferential dividend on A shares.

Or the word "cumulative" may be inserted before the word "preferential," and the words in brackets omitted. See *supra*, p. 253.

2. From and after the 1st day of September, 1881, the preference hereby given to the holders of the A shares shall determine, and thenceforth the holders of the A shares and of the B shares shall rank *pari passu* for dividends.

Preference to determine on expiration of fixed period.

FORM VII.

DIVIDEND CLAUSE WHERE PREFERENCE SHARES, ETC.

As already mentioned, (*supra*, p. 252,) the provisions as to payment of preferential dividends are sometimes inserted in a clause introduced in that part of the articles which relates to the payment of dividends. The two following clauses are examples :—

1. The net profits of the company in each year shall be appropriated in order of priority and manner following :—

Mode in which profits to be applied.

1. In paying to the holders of the A shares a cumulative preferential dividend at the rate of 10 per cent. per annum on the A shares held by them respectively.

Forms.

2. In paying to the holders of the ordinary shares a dividend of 8 per cent. for such year on the amount, for the time being, paid up on the ordinary shares held by them respectively.
3. In paying to the directors a sum equal to 5 per cent. on the net profits of the year [after deducting the amount paid to the holders of A shares in that year].
4. In paying to the holders of the founder's shares a sum equal to 10 per cent. on the said net profits [after making such deduction as aforesaid.]
5. Any surplus shall be divided among the holders of the ordinary shares.

FORM VIII.

DIVIDEND CLAUSE WHERE PREFERENCE SHARES, ETC.

Another form.

How profits to
be applied.

2. The net profits of the company in each year shall be applied as follows :—

1st. In paying to the holders of A shares a preferential dividend for such year at the rate of 7 per cent. on the amount, for the time being, paid up on the A shares held by them respectively.

2ndly. In paying a dividend for such year at the rate of 6 per cent. per annum on the B shares.

3rdly. Of the surplus profits 10 per cent. shall be paid to the directors, 10 per cent. shall be paid to the general manager of the company, 20 per cent. shall be carried to the sinking fund to be established pursuant to Clause hereof, and 60 per cent. shall be dealt with as the company in general meeting shall direct.

It will be observed that the interest taken by the directors is widely different under the two forms above given. In VII. they *may* become entitled to the whole of the surplus profits in some years after paying the dividends 1 and 2. In VIII. they can never get more than one-tenth part of the surplus profits.

FORM IX.

The two following clauses may be used with either of the foregoing.

Net profits.

1. The net profits of the company hereinbefore referred to shall mean the sum declared to be such by the directors.

2. The declaration of the directors as to the amount of the net profits of the company in each year, shall be conclusive, and no director, or other person, interested therein, or entitled to rights contingent on the amount thereof, shall be entitled to question such declaration.

Forms.

Declaration of directors conclusive.

FORM X.

FOUNDER'S SHARES.

Many companies have been formed with a capital consisting in part of "Founder's shares," which are agreed to be allotted to the promoters. They are usually of small nominal amount, *e.g.*, a capital of 100,200*l.*, divided into 10,000 shares of 10*l.* each and 200 Founder's shares of 1*l.* each.

1. The founder's shares shall be allotted by the directors in accordance with the said agreement, dated the — day of — last.

To be allotted according to agreement.

2. The founder's shares shall not confer on the holders thereof any right to attend or vote at any general meeting of the company.

Not to confer vote.

3. The directors may, whenever they think proper, and they shall, upon a requisition in writing by members holding not less than fifty founder's shares, call a separate meeting of the holders of founder's shares.

When separate meetings of holders to be called.

4. Any such requisition shall express the object of the meeting proposed to be called, and shall be left at the office of the company, and if for fourteen days after such requisition the directors fail to call such separate meeting the requisitionists, or any other members holding the like number of founder's shares, may themselves call a separate meeting of the holders of founder's shares.

Requisition for meeting.

5. Seven days' notice at least, specifying the place, day, and hour, if any, of such meeting, and the general nature of the business to be transacted, shall be given to the holders of founder's shares in manner hereinafter provided; but the non-receipt of such notice by any holder of founder's shares shall not invalidate the proceedings of any such meeting.

Notice of meeting.

6. The quorum of a separate meeting of holders of founder's shares shall be three persons personally present, holding collectively not less than — founder's shares.

Quorum.

7. At any such meeting each of the founder's shares shall confer one vote.

Votes.

Forms.

8. The following clauses of these presents shall, *mutatis mutandis*, apply to any such meeting, as if the same were here repeated, namely [here specify them, *e.g.*, "Clauses 68 to 73 inclusive, and Clauses 76 to 84 inclusive." See these clauses, *supra*, p. 167, *et seq.*]

Power to sanction provisional agreement.

9. A separate meeting of the holders of founder's shares, at which members holding not less than — founder's shares shall be present in person or by proxy, may sanction any provisional agreement made on behalf of the holders of founder's shares, with the directors on behalf of the company, for the surrender of the founder's shares, or the renunciation, modification, or alteration of any of the rights and privileges of the holders thereof, for such consideration and upon such terms and conditions as shall be specified in such agreement.

Agreement to be submitted to company.

10. Within one month after any such agreement shall have been sanctioned, as aforesaid, the directors shall submit the same to the company, and shall for that purpose call an extraordinary meeting.

When to become binding.

11. If at such meeting a resolution shall be passed confirming the agreement, the same shall thereupon become absolutely binding, and the directors shall carry the same into effect accordingly: otherwise the said agreement shall become null and void.

Special option to take new shares.

12. The holders of founder's shares shall, in proportion to the number of such shares held by them respectively, at any time within fourteen days after any resolution shall have been passed to increase the capital, have the option of taking one tenth part of the new shares, at par if such new shares be issued above par, and at the issue price of such shares if they shall be issued at or below par.

This *may* be a very valuable privilege and at the same time a very inconvenient thing to the company.

How option to be exercised or waived.

13. As soon as may be, after any such resolution to increase the capital as aforesaid, the directors shall give notice to each holder of founder's shares specifying the number of the new shares, which he is entitled to the option of taking, and the issue price thereof, and limiting a time within which the option, if not exercised, will be deemed to be waived, and, after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given,

that he waives his option, the directors may dispose of the shares, the subject of such option, as they think fit.

Forms.

14. The accounts of the company, as passed at any general meeting thereof, shall be absolutely binding and conclusive on the holders of founder's shares, both as to the amount of profit and in all other respects.

Accounts
binding.

FORM XI.

BONUS WARRANTS.

Bonus warrants, or some other security of a similar character, are sometimes agreed to be issued to the promoters of a company. Sometimes they are issued to the members, as in the clauses below. They are generally framed so as to be assignable free from equities. Such instruments are in the nature of debentures, as to which see further, *infra*, "Debentures."

1. There shall be issued to every person to whom shares in the original capital of the company shall be allotted one bonus warrant in respect of each of the said shares allotted to him.

Issue of war-
rants.

2. Every such bonus warrant shall be in the following form, and shall be under the seal of the company :—

Form.

The — Company, Limited. Bonus Warrant, No. —, 10%.

The — Company, Limited, will pay to the bearer of this warrant the sum of 10% at any time after this warrant shall have been selected for redemption, pursuant to the provisions in that behalf contained in the articles of association of the company, and will duly observe such provisions.

The bearer of this warrant will be entitled to the payment of the money, intended to be hereby secured, without being affected by any equity of the company against the original or any intermediate holder hereof.

The receipt of the bearer of this warrant shall be an effectual discharge for such money, and the company or persons paying the same shall not be bound to inquire into the title of the bearer.

IN WITNESS whereof the common seal of The — Company,

Forms. Limited, hath been hereunto affixed this — day of —, 13—.



 } Directors.

Countersigned, ———, Secretary.

Sinking fund. 3. The redemption of the said bonus warrants shall be effected by the operation of a sinking fund, which shall be created and formed by means of the appropriation to that purpose of the proportion of the net profits of the company specified in Clause — hereof.

For example of such a clause, see *supra*, p. 256.

Investment. 4. The directors shall invest the monies, from time to time carried to the credit of the sinking fund, in or upon such investments as they think proper, with full power, from time to time, to vary such investments, and to realise the same as occasion may require.

Application of sinking fund in redemption. 5. Whenever the said sinking fund shall amount to £—— or more, the directors shall apply the same in the redemption of so many of the said bonus warrants as it shall be competent to redeem.

How warrants to be selected for redemption. 6. The particular warrants to be redeemed on each occasion shall be selected by lot in the presence of a notary public.

Time, place, and notice of selection. 7. The selection shall be made on such day, and at such place, as the directors shall appoint, notice thereof being given in some London daily newspaper at least one week previously; and any holder of a warrant may attend thereat.

Notice after selection. 8. Forthwith, after such selection, notice shall be given by advertisement in a London daily newspaper of the numbers of the bonus warrants drawn for redemption.

Records to be kept. 9. The result of each selection shall be recorded in a book to be kept by the directors for that purpose, which shall be open for the inspection of the holders of bonus warrants.

Statutory declaration. 10. If the holder of a bonus warrant shall so require the notary public present at any such selection shall make a statutory declaration of the result thereof.

FORM XII.

Forms.

POWER TO ACQUIRE BUSINESS.

1. The directors may purchase or acquire upon such terms and under such stipulations as to guarantee or otherwise, as may be agreed upon, the business and goodwill of the said Messrs. —, as the same now stands. Power to acquire business.

The above was the authority given to the directors of Overend, Gurney & Co., Limited. "There is the *largest possible power* given to these gentlemen to buy this, which was, in itself, a speculative business, and they are to do it entirely in such manner as they may think expedient." *Per Lord Hatherley, Overend, &c. v. Gurney*, 4 Ch. 715.

It was held that the above power authorised the directors to purchase the business and to undertake the liabilities thereof. "I have no doubt whatever," said *Lord Chelmsford*, "that the words 'as the same now stands' must mean that the business is to be taken over with its credits and liabilities, that is, as the business appeared in the books of the company." S. C., 5 H. L. 505. However it is usual in empowering directors to acquire a business, expressly to refer to the liabilities.

FORM XIII.

POWER TO ACQUIRE BUSINESS.

The directors may purchase, or otherwise acquire, and undertake, upon such terms and conditions as they think fit, the business of a —, now carried on by Messrs. — & Co., at —, and all, or any part of the property, and liabilities of the said firm in connection with the said business. Another power to acquire business.

FORM XIV.

POWER TO ACQUIRE BUSINESS.

The directors may, upon such terms and conditions as they think fit, acquire all or any part of the land and buildings known as the — Works, at —, and of the plant, machinery, fixtures, stock-in-trade, chattels, and effects, rights and privileges, in or about the said works or otherwise belonging to —, in connection with the business carried on there by him, and undertake all or any of the contracts and liabilities of the said —, in relation to the said business. Another power to acquire business.

Forms.

FORM XV.

TRANSFER OF SHARES.

The following Clauses are occasionally used.

Special regulations as to transfer.

1. A share shall not be transferred except in accordance with the regulations following : that is to say,—

- (a) Any holder of a share who proposes to transfer the same, shall serve notice of such proposal on the company.
- (b) The notice shall be in writing, and shall specify the share or shares to be transferred, and the name and address of the proposed transferee.
- (c) The directors shall, within fourteen days after the service of such notice, notify to the person making the proposal their approval or disapproval of the transfer.
- (d) If the directors shall notify their disapproval in manner aforesaid, and shall, within fourteen days after such notification, procure some other person willing to take the shares proposed to be transferred at the then market price, the said shares shall thereupon be transferred to such last mentioned person.
- (e) But if the directors shall not, within the period aforesaid, procure such person, they shall, subject to the Clause — [*lien*] hereof, be bound to register the proposed transfer.
- (f) The market price shall be fixed by some person to be named by the directors, and his fee shall be paid out of the funds of the company.

FORM XVI.

CLAUSES AS TO TRANSFER OF SHARES GIVING MEMBERS
RIGHT OF PRE-EMPTION.

Member to have right of pre-emption.

1. No share shall be transferred to a stranger so long as any member is willing to purchase the same at the fair value.

Mode of exercising right.

2. In order to ascertain whether any member is willing to purchase a share offered for sale, the seller, whether entitled in his own right or otherwise, shall give notice to the secretary that he desires to sell the share, and such notice shall constitute the secretary his agent to contract with any member for the sale of the share at the fair value to be determined as mentioned below. If the secretary fails, for the space of ten

days, to find a member willing to purchase the share, and to give notice thereof to the seller, the shares may be disposed of as if these provisions had not been made.

Forms.

3. The value of a share offered for sale though the secretary, pursuant to the last preceding clause, shall be fixed, in the first instance, by the seller. If a member, otherwise willing to purchase the share, is not willing to give the price named, the value shall be fixed by some indifferent person, to be appointed by the directors, and whose fee shall be payable out of the funds of the company.

How value of share to be ascertained.

This form is sometimes used in the case of a company which is the incorporation of the members of a firm to carry on the partnership business with limited liability.

FORM XVII.

FORFEITURE OF SHARES OF MEMBER SUIVING COMPANY.

1. The shares of any member who, directly or indirectly, commences, carries on, supports, or threatens any action or other proceeding against the company, or the directors, or any of them in their capacity of directors, may, notwithstanding the pendency of any such proceeding, and whatever may be the ground, or alleged ground, of any such proceeding, on the recommendation of the directors, and with the sanction of an extraordinary general meeting, be absolutely forfeited for the benefit of the company; but in every such case the directors shall, within fourteen days after the forfeiture, pay to such member the full market value of the shares at the time of the forfeiture thereof, such value, in case of difference, to be ascertained by the chairman, for the time being, of the London Stock Exchange.

Power to forfeit shares of litigating member.

Value of shares to be ascertained and paid.

The above clause is but rarely inserted, and how far it is available has not yet been settled. Where an action was brought by a member to prevent the directors from effecting an illegal reduction of capital, it was held that a pretended forfeiture by the directors under such a clause was void. *Hope v. International Financial Society*, W. N. 1876, 257. The same principle would no doubt apply in the case of any action brought to prevent an act *ultra vires* the company.

In most cases the principle of the common law is deemed fully sufficient to protect a company from being unnecessarily worried by litigious members. The well known case of *Fuss v. Harbottle*, 2 Hare, 461, is a leading illustration of the principle referred to, namely, that the court will not, at the suit of a minority, interfere in the internal affairs of a company. The remedy of the minority must be found within the company. And this rule applies equally where the majority actively show their approval of the acts complained of, or tacitly by not interfering.

Forms.

The only exceptions to the rule are where the act complained of is *ultra vires* the company, or a fraud on the minority, or where the majority are acting oppressively, *e.g.*, by attempting to secure a benefit for themselves at the expense of the minority.

The following cases in which the court refused to interfere at the suit of a minority, may be given as examples of the application of the rule. *Foss v. Harbottle*, 2 Ha. 461. Directors acting in contravention of company's regulations, but not *ultra vires* the company.

Mozley v. Alston, 1 Ph. 790. Directors acting who were not duly appointed.

Wandsworth, &c., Co. v. Wright, 18 W. R. 728; *Gray v. Lewis*, 8 Ch. 1036. Suit by one member on behalf of himself and other members to recover property belonging to the company. See also *Russell v. Wakefield Waterworks Co.*, 20 Eq. 474; 23 W. R. 887; 44 L. J. Ch. 490, to same effect.

MacDougall v. Gardiner, 1 Ch. Div. 13. Alleged infringement by directors of regulations.

In *Gray v. Lewis*, *ubi supra*, James, L. J., said: "I think that it is of the utmost importance to maintain the rule laid down in *Mozley v. Alston*, and *Foss v. Harbottle*, to which, as I understand, the only exception is where the corporate body has got into the hands of directors and of the majority, which directors and majority are using their power for the purpose of doing something fraudulent against the minority." . . .

In *MacDougall v. Gardiner*, the same judge observed: "I think it is of the utmost importance to all these companies that the rule which is well known in this court as the rule in *Mozley v. Alston*, . . . and *Foss v. Harbottle*, should be always adhered to; that is to say, that nothing connected with the internal disputes between the shareholders is to be made the subject of a bill by some one shareholder on behalf of himself and others, unless there be something illegal, oppressive, or fraudulent—unless there is something *ultra vires* on the part of the company *quâ* company, or on the part of the majority of the company, so that they are not fit persons to determine it; but that every litigation must be in the name of the company, if the company really desire it."

On the other hand the following may be given as cases in which the rule has been held not to apply:—

Clinch v. Financial Corporation, 5 Eq. 450; 4 Ch. 117. Act *ultra vires* the company.

Menier v. Hooper's Telegraph Works, 9 Ch. 350. Majority proposing to benefit themselves at expense of minority.

Cannan v. Trask, 20 Eq. 675. Seton on Decrees, 266. Unfair contrivance by directors to hold meeting at such a date as would prevent transferees of shares from voting.

Holmes v. Newcastle, &c., Co., 1 Ch. Div. 682. Illegal return of capital.

Henry v. Great Northern Ry. Co., 4 K. & J. 1; 6 W. R. 87. Infringement of rights of holders of preference shares.

See further, Lindley, 935 and 817; and *In re Hester & Co.*, 44 L. J. Ch. 757. Seton on Decrees, 266, *et seq.*

FORM XVIII.**POWER TO RECEIVE CALLS IN ADVANCE.**

As to terms

The directors may, if they think fit, receive from any

member willing to advance the same, all or any part of the difference between the nominal amount of the shares held by him and the amount actually paid up or called for in respect of such shares; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount then paid, or payable in respect of instalments or calls upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Forms.

on which monies may be received in advance of calls.

The above clause is sometimes used instead of Clause 20, *supra*, p. 150. See also Clause 7 of Table A., *supra*, p. 239.

See as to the position in the winding up of members who have paid up in advance, *infra*, notes to Form XLVI.

FORM XIX.

INCREASE OF CAPITAL.

The company may, from time to time, increase the capital by the creation of new shares. The new shares shall be issued upon such terms and conditions, and with such rights and privileges annexed thereto, as the directors shall determine, and, in particular, such shares may issued with a preferential or qualified right to dividends, and in the distribution of assets of the company, and with a special or without any right of voting.

Power to increase capital.

Preference shares.

The above clause may be substituted for Clauses 48 and 49, *supra*, p. 160. The effect will be to vest the power of increasing the capital in the directors by virtue of Clause 113 [*supra*, p. 183], but it is not generally deemed expedient to do this. The sanction of the company in general meeting or by special resolution is usually required.

The power to increase its capital at pleasure is a great advantage possessed by a company formed under the Act of 1862 over one governed by the Companies Clauses Consolidation Acts, 1845, which can only increase by special Act. The power is given by Section 12 of the Act of 1862. [See *supra*, p. 82.]

An increase of capital is so commonly required by companies that the authority is almost always inserted. It is given in Table A.

But even though not inserted Section 12 of the Act enables a company by special resolution to take the necessary power. And one special resolution is enough. *Campbell's Case*, 9 Ch. 1. Whereas, in case a company not having power by its regulations as originally framed to *reduce* its capital, desires to do so, two special resolutions are necessary, (1.) To alter the regulations; (2.) To resolve on the reduction. *In re West India and Pacific Steamship Co.*, 9 Ch. 11, note (2).

Forms.

As to notice of increase of capital to be given to the Registrar of Joint-Stock Companies and penalty for default, see *infra*, "Notices."

For form of notice and as to fees payable thereon. *Ibid.*

In *Bryon v. Metropolitan Saloon Omnibus Co.*, 3 De G. & J. 123, 6 W. R. 817, it was contended that to borrow money was in effect to increase the capital, that the Act only authorised an increase of capital by the issue of new shares, and that to borrow was therefore illegal. But it was held that this view was incorrect. See the judgment of Kindersley, V.-C., as given in 6 W. R. 817.

See also *The Peninsular Company v. Fleming*, 27 L. T. 93, in which it was decided that Section 12 does not prevent the insertion with articles of provisions for a forced loan from the members. See *infra*, Form XXXI.

As to the Issue of Preference Shares.

Power to increase capital can, as already mentioned, be taken by special resolution where the articles do not contain the necessary authority.

But the new shares cannot be given any preference or priority over the shares in the original capital, unless the memorandum, or articles as originally drawn, contains the necessary authority.

If both memorandum and articles of a company are silent on the subject, it is an implied condition that the members shall be entitled to rank equally as regards dividend without any preference or priority between themselves, and as Section 12 of the Act (see *supra*, p. 82,) prohibits, with certain exceptions, any alteration of the conditions contained in the memorandum, this condition is unalterable. The implication however does not arise when the memorandum provides for the issue of preference shares; and it is rebutted where the articles registered at the same time as the memorandum award preferential rights or authorise the issue of preference shares. *Hutton v. Scarborough Cliff Hotel Co.*, 2 Dr. & Sm. 514 (1); 13 L. T. 57; 13 W. R. 1059; *Melhado v. Hamilton*, 29 L. T. N. S. 364; 21 W. R. 619; *Harrison v. Mexican Railway Co.*, 19 Eq. 368; *Bangor, &c., Co.*, 20 Eq. 59.

Not to be able to issue preference shares is often found a serious inconvenience and loss to a company.

As it is now well settled that a power to issue preference shares inserted in the articles is sufficient, (*Harrison v. Mexican Ry. Co.*, *ubi supra*.) the practice which at one time was not uncommon of referring to the issue of preference shares in the capital clause of the memorandum has, to a considerable extent, been abandoned. For one of the forms which were in use, see *supra*, p. 88. The following is another: "The capital of the company is 50,000*l.*, divided into 5,000 shares of 10*l.* each, which shares and all other shares of which the present or any future capital of the company shall consist may be divided into different classes or series, and may have such preference, guarantee, or privileges as between themselves as shall be determined by the regulations of the company for the time being." Where no articles are registered, such a clause should be inserted in the memorandum.

Power in the articles to increase the capital "by the issue of new shares of such nominal amount, and on such conditions as such resolution may determine," is not sufficient to authorise the issue of preference shares. *Melhado v. Hamilton*, 21 W. R. 619; 29 L. T. N. S. 364.

But where the articles authorise an increase of capital by the issue

Forms.

of new shares "with such rights and privileges, or with such restrictions and on such terms and conditions as the company in general meeting directs," preference shares can be created. *Webb v. Earle*, 20 Eq. 556.

Where there was power to increase the capital in such manner and to be issued with and subject to such rules, regulations, privileges and conditions as the company, &c., should think fit, the Master of the Rolls held that the words "privileges and conditions" were words of extensive meaning and fully authorised the issue of new shares with a preference dividend. *Harrison v. Mexican Railway Co.*, *ubi supra*.

Of course a company may only have power to give a preference as regards dividends. But it may be very desirable, especially where new shares are to be issued, to provide that the holders thereof shall be repaid their capital out of the assets in priority to the other members. See the observations on this point of Malins, V.-C., *Eclipse Gold Mining Co.*, 17 Eq. 490. Whether the company can confer this privilege must depend on the construction of the articles. Power for the company to increase its capital "upon such terms, and either with or without special privileges or preferences to the holders of the shares in such increased capital as it may from time to time deem expedient," enables it to give a preference as regards capital as well as dividends. *In re Bangor, &c.*, *Co.*, 20 Eq. 69.

But there is a great distinction between creating shares having a preference over those already issued, and in creating shares with deferred rights. And it would seem that shares with only a deferred right to dividend may be issued without any special authority in the articles as originally framed, for the persons who take such shares will be bound by their contract, and so will their transferees. *Ashton Vale Iron Company v. Abbot*, W. N. 1876, 119.

For forms of resolution for the creation of preference shares, see *infra*, "Resolutions." And for clauses giving a preference in the distribution of assets, see *infra*, Form XLVL, *et seq.*

FORM XX.**OPTION TO MEMBERS TO TAKE NEW SHARES.**

1. Upon any such increase of capital the new shares to be issued in respect thereof shall be offered to the existing members, in proportion to the shares held by them, upon such terms as may be prescribed by the resolution authorising such increase, but, if no terms shall be prescribed, then upon such terms as the directors may think fit; and such offer shall be made by notice, specifying the number of shares to which the member is entitled, and limiting the time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given, that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

New shares to be offered to existing members.

Forms.

Qualification
of preceding
clause.

2. But if the company, after having attached to any new shares, created as aforesaid, any preference, or other special privilege, shall create any further new shares, the holders of the first mentioned new shares shall not, in respect thereof, be entitled to any offer of the last mentioned new shares, unless the company otherwise determine.

The above clauses are occasionally used.

FORM XXI.**FIRST DIRECTORS.**

Subscribers to
appoint first
directors.

The first directors shall be nominated by the subscribers to the memorandum of association either by a memorandum under their respective hands entered in the minute book, or by a resolution carried at a meeting of such subscribers, at which a majority shall be present, and until such directors shall be so appointed the said subscribers shall be deemed to be the directors.

FORM XXII.

Another
form.

The first directors shall be appointed as follows: that is to say, two by A. B., a subscriber hereto; two by C. D., a subscriber hereto; and one by E. F., party to the said agreement referred to in clause hereof.

FORM XXIII.**POWER FOR DIRECTORS TO APPOINT ADDITIONAL DIRECTORS
BEFORE SECOND GENERAL MEETING.**

As to appoint-
ment of addi-
tional direc-
tors.

The directors shall have power, from time to time, to add to their number, subject to the limit hereinafter mentioned, at any time before the second ordinary general meeting of the company.

FORM XXIV.**DIRECTORS' QUALIFICATION.**

Qualification
of directors.

No person shall be elected or appointed a director unless he shall have been the holder of his share qualification for at least — months before his election or appointment, but this clause shall not apply to the directors hereby appointed, or to

any directors appointed under Clause —, or to any director elected upon the recommendation of the directors. Forms.

See *supra*, p. 174.

FORM XXV.

APPLICATION TO PARLIAMENT.

The directors may promote, in the next or any ensuing session of parliament, a bill for the dissolution of the company and the incorporation of the members thereof as a company, with objects similar in part or altogether to those of this company, or for conferring any powers on this company which the directors may deem necessary or desirable for carrying out the objects of the company, and may pay the costs of and incident to the promotion of any such bill out of the funds of the company.

Power to
directors to
promote bill.

Such a clause is sometimes inserted. It must, however, be borne in mind that unless expressly or impliedly authorised by its memorandum of association, a company cannot apply any of its funds in defraying the expenses of obtaining an Act altering the constitution of the company. Such an application of its funds is *ultra vires* the company, and the Court will interfere at the instance of even one dissentient member. If, therefore, upon the formation of the company, application for any such act is contemplated, the memorandum should be framed accordingly. See *supra*, pp. 110, 123. But, although, if the memorandum be not so framed, the expenses cannot come out of the company's pocket; any of the members are at liberty, at their own expense, to apply for an Act which, if passed, will affect the whole company and change its constitution. Those shareholders who object to the application must oppose it in Parliament. See Lindley, 628, and *Ware v. The Grand Junction Waterworks Co.*, 2 R. & M. 470; and other cases cited in Lindley, *ubi supra*. See also *Mathias v. The Company, &c., of the Berks Canal Navigation*, W. N. 1876, p. 91, and (on appeal) p. 158. In this case the company was about to apply for an Act affecting its constitution, and a dissentient member sought for an injunction to restrain the application, and to prevent the payment of the expenses out of the funds of the company. It was held, however, that the plaintiff was bound to submit to the will of the majority, and upon an undertaking being given by the company not to apply its funds to the promotion of the bill, the injunction was refused by the V.-C. Malins, whose decision was affirmed on appeal.

The following standing orders of the House of Commons, Session 1877, may here be mentioned :—

63. Every bill originating in this House, and empowering or requiring any company . . . formed or registered under the Companies Act, 1862, . . . to do any act not authorised by the memorandum and articles of association of such company . . . shall, after the first reading thereof, be referred to the examiners, who shall report as to compliance or non-compliance with the following order :—

Forms.

In the case of a company, formed or registered under the Companies Act, 1862, the bill, as introduced or proposed to be introduced in this House, shall be approved by a special resolution of the company. . . .

A copy of such special resolution shall be deposited in the Private Bill Office.

65. In the case of every bill brought from the House of Lords, in which provisions have been inserted in that House, empowering or requiring any company formed or registered under the Companies Act, 1862 to do any act not authorised by the memorandum and articles of association of such company the examiner shall report as to compliance and non-compliance with the following order :—

In case of a company formed or registered under the Companies Act, 1862.

The bill, as introduced or proposed to be introduced into this House, shall be approved by a special resolution of the company. . . .

A copy of such special resolution shall be deposited in the Private Bill Office. Provided always, that if by the terms of such special resolution or consent, the bill, as introduced or proposed to be introduced into the House of Lords, shall have been approved or consented to, subject to such additions, alterations, and variations, as Parliament may think fit to make therein ; then it shall not be necessary for the purposes of this order, to obtain any further approval or consent in respect of any provisions inserted in the bill in the House of Lords. Provided, nevertheless, that it shall be competent for the committee on the bill, if they think fit, having regard to the nature and effect of such provision, to require any further evidence of the approval or consent of such provisions on the part of the shareholders or members of the company.

131. Where a bill is promoted by an incorporated company, shareholders of such company shall not be entitled to be heard before the committee against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company.

See also Standing Order 75 as to the right of a dissenting member to be heard before the examiner upon the question whether Standing Orders 63 and 65 have been complied with.

Lords.

The House of Lords has made similar standing orders, see further, *supra*, p. 110.

FORM XXVI.

POWER FOR COMPANY TO CONTRACT WITH DIRECTORS.

Company may
contract with
directors.

1. The company may make contracts with any of the directors upon such terms as the directors shall think fit ; and a director shall not, by reason of the fiduciary relation subsisting between him and the company, be accountable for any profit made by him in respect of any such contract, nor, subject to the following proviso, in respect of any other contract made with the company in the profits of which he participates or in which he is otherwise interested ; provided that the fact of his being so interested therein, and the nature of his interest be

fully and fairly disclosed by him at the meeting of the directors at which the contract is determined on, if his interest then exists, or, in any other case, at the first meeting of the directors after the acquisition of his interest.

2. No director shall vote [nor shall the managing director exercise any discretion as between himself and the company] in respect of any contract or matter in which he is individually interested otherwise than as a member.

Forms.

Director not
to vote where
personally
interested.

If desired, the above clauses can be inserted in the articles. Clause 1 will come, *supra*, p. 176, between Clauses 91 and 92; and Clause 2 *supra*, p. 181, between Clauses 105 and 106. If these clauses are inserted, subsection (e) of Clause 92, *supra*, p. 177, must be omitted.

As a director stands in a fiduciary relation towards the company, he cannot, unless the articles otherwise provide, contract with the company. "Whether you look upon a director as a trustee or as an agent, he cannot take the benefit of a contract entered into between himself and the company, because he is not to make a profit in the case where he is both buyer and seller. This is the simplest principle. Being in a fiduciary position, and having therefore a duty to perform to what are commonly called his constituents, that is, the company and the shareholders, he is not entitled to say that he will perform that duty properly in a case where his self-interest would be opposed to the proper performance of his duty. That is an intelligible principle, and one well understood." *Per Jessel, M.R., Albion, &c., Co. v. Martin*, 1 Ch. Div. 580. Nor does it make any difference that the contract is open and above board as between the contracting director and his co-directors. *Ibid.*

But a company may unquestionably waive the benefit of the rule. *Imperial, &c., Association v. Coleman*, 6 Ch. 568; L. R. 6 H. L. 190; *Southall v. British Mutual, &c., Society*, 6 Ch. 619; *Black v. Mallaloe*, 7 W. R. 303; *Adamson's Case*, 18 Eq. 670; and it has now become very common to do so, and to insert clauses to the effect of the above. See also *supra*, p. 177.

It may be convenient here to refer to the well settled rule, that an agent cannot, without the knowledge and consent of his principal, be allowed to make any profit out of the matter of his agency beyond his proper remuneration. This rule applies with peculiar stringency to the directors of joint-stock companies. *Hay's Case*, 10 Ch. 601.

The rule is "not a technical or arbitrary rule. It is a rule founded upon the highest and truest principles of morality. No man can, in this Court, acting as agent, be allowed to put himself into a position in which his interest and his duty will conflict." *Per Lord Cairns, L.C., Parker v. McKenna*, 10 Ch. 118. The Court will not inquire whether the principal has lost or not lost by the acts of the agent. "All that the Court has to do is to examine whether a profit has been made by the agent without the knowledge of his principal in the course and execution of his agency. . . ." *Per Lord Cairns, ibid.*

The rule "is an inexorable rule, and must be applied inexorably by this Court, which is not entitled, in my judgment, to receive evidence or suggestion, or argument, as to whether the principal did or did not suffer any injury, in fact, by reason of the dealing of the agent; for the safety of mankind requires that no agent shall be able to put his principal

Forms.

to the danger of such an enquiry as that." *Per James, L.J., ibid.*, p. 124.

See the above cases and the following :—

Parker v. Lewis, 8 Ch. 1035 ; *Ottoman Bank v. Furley*, 17 W. R. 761 ; *Carling's Case*, 1 Ch. Div. 123 ; *Morrah Consols, &c., Co.*, 2 Ch. Div. 1 ; *Morrison v. Thompson*, L. R. 9 Q. B. 480 ; *Sir E. Pearson's Case*, 4 Ch. Div. 222, since affirmed on appeal ; *Dunne v. English*, 18 Eq. 524.

FORM XXVII.**REMUNERATION OF DIRECTORS.**

The following is a form sometimes used, see *supra*, p. 175.

Directors to
have percent-
age on profits.

The directors shall receive, by way of remuneration, in each year the sum of —£, and such further sum as may be equal to 5 per cent. of the net profits of the company in that year, payable out of the surplus remaining after payment of the preferential dividend to the holders of A shares, and of a dividend of 7 per cent. per annum on the amount paid up on the ordinary shares, so far as such surplus will extend, and all such remuneration shall be divided so that there shall be given to the chairman of the directors — equal parts thereof, and to each of the other directors one equal part thereof.

FORM XXVIII.**INDEMNITY TO OFFICERS.**

Indemnity.

1. Every director, manager, secretary, and other officer or servant of the company, shall be indemnified by the company against, and it shall be the duty of the directors out of the funds of the company to pay, all costs, losses, and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into, or act or deed done by him as such officer or servant, or in any way in the discharge of his duties ; and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the company and have priority as between the members over all other claims.

The above clause is occasionally inserted. See as to the right to indemnity of directors and other agents, *Lindley*, 775 ; see also *Story on Agency*, 339, *et seq.*

Forms.

FORM XXIX.

ONE DIRECTOR NOT TO BE LIABLE FOR ANOTHER.

2. No director or other officer of the company shall be liable for the acts, receipts, neglects, or defaults of any other director or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the company through the insufficiency or deficiency of title to any property acquired by order of the directors for or on behalf of the company, or for the insufficiency or deficiency of any security in or upon which any of the monies of the company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency, or tortious act of any person with whom any monies, securities, or effects shall be deposited, or for any other loss, damage, or misfortune whatever which shall happen in the execution of the duties of his respective office or in relation thereto, unless the same happen through his own wilful act or default.

Individual
responsibility
of directors.

The above clause is sometimes inserted. See Lindley, 616, as to liability of directors for acts of each other. As to the right to contribution, see Lindley, 788, *et seq.*; and *Ashurst v. Mason*, 20 Eq. 225.

In the case last mentioned, shares of a company had (pursuant to an *ultra vires* resolution of the board) been purchased and transferred into the name of A., a director, in trust for the company. It was held that A. was entitled to contribution from the directors who concurred in the transaction for calls he had paid. See also *Power v. Hoey*, 19 W. R. 916; and *Power v. O'Connor*, *ibid.*, 923.

FORM XXX.

REDEMPTION OF SHARES.

1. Every member entitled to guaranteed preference shares shall hold the same subject to redemption at par out of the profits of the company applicable for that purpose as herein-after provided.

Guaranteed
shares to be
subject to
redemption.

2. The redemption of the said guaranteed preference shares shall be effected by the operation of a redemption fund which shall, &c., &c.

How to be
effected.

Ut supra, p. 260, Clause 3.

Form.

1.

2.

3.

4.

5.

6.

7.

8.

Redemption
of shares of the
company in whole
or in part.

10. Every ~~redeemed~~ preference share redeemed in manner aforesaid shall nevertheless be deemed to be an ordinary share, and may be disposed of by the directors as they think fit.

If interest provision can be made for payment of a premium on redemption.

If the above clauses are inserted, the provision should be made in the ordinary clause for carrying a share of the profits to the redemption fund. See *supra*, p. 246.

Redemption of ordinary shares out of profits is not open to objection as a reduction of capital.

FORM XXXI.

MEMBERS' LOAN FUND.

Power to raise a forced loan from the members is occasionally inserted in articles. It is valid and effectual. *Pennycuik Co. v. Fleming*, 27 L. T. N. S. 93. It indirectly enables a company to increase and then to reduce its working capital without proceeding under the Act of 1867. Thus, suppose the shares to be 1*l*. and that the holders are to be liable to contribute 10*l*. per share to the loan fund. The directors will have power to call up the 10*l*., or any part of it, as they think fit; and if subsequently it is deemed expedient to return the amount, the directors can do so, and when necessary call it up again. The liability of the members in the winding up will be limited to so much of the 1*l*. as remains unpaid on the shares. They cannot be called on, in order to pay outside creditors and the expenses of the winding up, to contribute any part of the 10*l*. *Maxwell's Case*, 20 Eq. 591.

Directors may
establish loan
fund.

1. The directors may, if they think fit, establish a loan fund, to be formed by contributions from the holders of A shares, not exceeding ———*l*. per share.

Of course these clauses can be made applicable to all members, or to the holders of a specified class of shares.

Holders of A
shares to con-
tribute.
Calls.

2. The holders of the A shares shall be liable to pay the said contributions rateably in proportion to the number of A shares held by them respectively, and the directors may make calls in respect of such contributions at such time as they think fit, provided that twenty-one days' notice at least be given of each

call. Each holder of A shares shall pay the amount of every call so made in respect of the A shares held by him to the persons and at the times and places appointed by the directors.

Forms.

3. No such call as aforesaid shall exceed —l. per share, or be made within one month of a previous call.

No call to exceed —l.

4. Every such call shall be deemed to have been made at the time when the resolution of the directors making the same was passed.

When call to be deemed made.

5. If any such call is not paid on or before the day appointed for payment thereof, the holder for the time being of the share in respect whereof the same was made, shall pay interest thereon at the rate of 10 per cent. per annum from the day appointed for the payment thereof to the time of actual payment.

Interest on call not duly paid.

6. The amount contributed to the loan fund in respect of each A share, shall be deemed to be a debt due from the company to the holder for the time being of the share, and repayable at such time, and carrying interest at such rate, as the directors shall think fit.

Contribution to loan fund to be debt due to member.

7. The directors may deal with the funds for the time being constituting the loan fund in such manner as they think expedient for the purposes of the company.

How funds to credit of loan fund to be dealt with.

8. The directors may at their discretion repay to the holders of A shares *pari passu* all or any part of the principal monies owing to them in respect of such contributions as aforesaid, but such repayment shall not prejudice the right to make subsequent calls under Clause [2], so that the amount at any one time due for contributions shall not exceed —l. per A share.

Directors may repay contributions.

FORM XXXII.

RESTRICTION ON VOTING.

No member shall be entitled to vote at any general meeting unless all calls due from him shall have been paid ; and no member shall be entitled to vote, in respect of any share that he has acquired by transfer, at any meeting held after the expiration of four months from the incorporation of the company, unless he shall have been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote ; but this regulation shall not affect shares

When members not entitled to vote.

- **Forms.** acquired by marriage, or under a testamentary disposition, or by succession to an intestate estate.

See *supra*, p. 169, as to object of such a clause.

FORM XXXIII.

GENERAL MANAGER.

Directors may appoint general manager. The directors may, from time to time, appoint a general manager of the business of the company, and may remove and discharge any such person and appoint a substitute, and the directors shall take such security (if any) for the good conduct and satisfactory discharge of the duties of such general manager as they shall in their discretion think sufficient.

See *Evans v. Coventry*, 8 De G. M. & G. 835 ; 25 L. J. N. S. Ch. 491., as to taking security.

FORM XXXIV.

MANAGER.

Appointment of first manager. 1. The said — shall be the first manager of the company, and shall not be removable from office otherwise than by his own resignation or by special resolution, and shall, while holding that office, devote the whole of his time and attention to the business of the company, and shall exercise and perform the functions and duties prescribed by the directors.

His salary. 2. The salary of the said — as such manager shall be at the rate of —£. per annum, payable monthly, on the first day of every month; he shall also, while holding such office, be entitled to a commission equal to 5 per cent. on the net profits of the company in each year in which the same shall be more than sufficient to pay a dividend at the rate of — per cent. on the paid-up capital of the company.

3. The declaration of the directors, as to the amount of the net profits of the company in each year, shall be conclusive as against the said —

FORM XXXV.

MANAGING DIRECTOR.

First managing director. 1. The first managing director of the company shall be A., of —, who shall hold that office until the ordinary meeting in the year —, at a salary of —£. per annum, payable at

such times as may be agreed upon between him and the directors. **Forms.**

2. The said A., during his term of such office, shall devote the whole of his time and attention to the business of the company, and shall not directly or indirectly engage or be concerned in any other trade or business without the consent of the directors. **His duties.**

3. Upon any vacancy occurring in the said office, the directors may either fill up the office by the appointment of some one of their body thereto, or may at their discretion discontinue the same. **Vacancy.**

4. Subject to the provision in Clause 1 hereof contained as to the remuneration of the said A., the remuneration of the managing director (if any), for the time being, shall be fixed by the directors, and may be, by way of salary or commission, or participation in the profits, or by any or all of those modes. **Remuneration of future managing director.**

5. The directors may, from time to time, entrust (see *supra*, p. 180). **Further provisions.**

FORM XXXVI.

TRUSTEES.

The following clauses are occasionally inserted, but Subsection 7, *supra*, p. 186, is generally deemed sufficient.

1. The company may, from time to time, in general meeting, appoint any person or persons, whether members of the company or not, to be trustee or trustees of all or any part of the property of the company, and may, from time to time, in general meeting, remove any such trustee or trustees from office, and appoint a successor or successors. **Power to appoint trustees.**

2. On the appointment of any trustee, the directors shall cause a deed or instrument to be executed by him, declaring the trusts upon which he holds, or will hold, any property of the company vested in him; and the directors shall not permit any of the property of the company to be vested in any such trustee until he shall have executed such declaration of trust as aforesaid. **Declaration of trust to be executed.**

3. On the appointment of any trustee or trustees, and upon the execution by him of the declaration of trust aforesaid, the directors shall cause such of the property of the company as shall be directed or intended by the general meeting appoint- **As to vesting property in trustee.**

Forms.

ing such trustee or trustees, to be vested in his or their name or names, or under their or his legal contract jointly with any continuing or other trustee or trustees, or solely, as the case may be, or may be so directed or intended as aforesaid.

FORM XXXVII.**LOCAL AND OTHER COMMITTEES.**

The following clauses are sometimes inserted, but Sub-section 11a, *supra*, p. 187, is generally found sufficient.

Power to
appoint com-
mittees.

1. The directors may, from time to time, appoint and remove such local committees in the United Kingdom, or elsewhere, consisting of such person or persons as the directors may think fit, and may determine and regulate the quorum, duties, procedure, and remuneration of any such committee.

Powers may
be delegated
to committee.

2. The directors may delegate to any local committee such of the powers, authorities, and discretions of the directors as they think expedient, and every local committee shall make all such returns, and furnish all such accounts, as the directors shall from time to time prescribe or require, and every local committee shall be in all respects subject to the control of the directors.

Expenses to be
paid.

3. The directors may pay the expenses, occasioned by any of the matters aforesaid, out of the funds of the company.

FORM XXXVIII.**INVESTMENT OF MONIES.**

The following clauses are such as are used in an investment company.

How funds to
be invested.

1. The directors shall invest the monies of the company which shall not from time to time be required as working capital, in such of the investments specified in the memorandum of association of the company, as they shall think fit; Provided always that the directors shall not invest more than one-tenth part of the capital of the company in any one investment.

How invest-
ment to be
authorised.

2. All investments and reinvestments of the monies of the company, pursuant to the last preceding clause hereof, shall be authorised by a resolution passed at a meeting of the directors by three-fourths of the directors present, of whom the chairman, or acting chairman, shall be one.

- | | |
|--|---|
| <p>3. The directors may make temporary investments of the monies of the company, in or upon any of the public stocks or funds, or government securities of the United Kingdom or India, or in stock of the Bank of England, or may place such monies on deposit at interest, or otherwise, at any bank or discount establishment, and may, from time to time, at their discretion, realise such investments and call in such monies.</p> | <p>Forms.
As to temporary investments.</p> |
| <p>4. The directors, with the sanction of a resolution passed at a meeting of the directors by three-fourths of the directors present, of whom the chairman or acting chairman shall be one, and specifically referring to the investments to be dealt with, may sell and dispose of any of the investments made under Clause 1 hereof.</p> | <p>As to sale of permanent investments.</p> |
| <p>5. Upon every such sale as last aforesaid a sum equal to the original cost of the investments sold shall be reinvested in the manner provided by Clause 1 hereof.</p> | <p>Re-investment.</p> |
| <p>6. If the net proceeds of such sale exceed the amount of the original cost, including the expenses of the investment, the profit realised by such sale shall be carried to the revenue account, or to the reserve fund as and in such proportion as the directors shall determine; but, if the amount so realised shall be less than the original cost, the deficiency shall be made up, in such manner as the directors shall determine, out of the revenue account and reserve fund, or either of them.</p> | <p>As to profit or loss on sale.</p> |

FORM XXXIX.

INSPECTION.

For other forms, see *supra*, p. 192.

The secretary shall allow, between the hours of ten in the forenoon and twelve at noon, such inspection of the register of members as is provided by the statutes, but so that every member or other person, before inspecting any such register, shall sign his name in a book kept for that purpose; and shall allow, before every ordinary meeting, to any member who shall apply for the same, an inspection of such of the books of account of the company, and at such times and under such restrictions as the directors may determine, but shall not allow any further or other inspection of the books, papers, or documents of the company.	Conditions on which members entitled to inspect books, &c.
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Forms.**FORM XL.****ACCEPTANCE OF BILLS, ETC.**

How bills,
&c., to be
accepted.

All cheques, bills of exchange, promissory notes, and other negotiable instruments, shall be drawn, accepted, made, or indorsed, for and on behalf of the company by one or more of the directors, and shall be countersigned by the secretary.

The above and the following clause are not uncommon.

FORM XLI.**SEAL.**

Under what
conditions seal
to be affixed
to instru-
ments.

The secretary shall affix the seal with the authority of the directors, and in the presence of one director at least, to all instruments required to be sealed, and all such instruments shall be countersigned by the secretary.

FORM XLII.**PROTECTION OF PERSONS DEALING WITH COMPANY.**

What securi-
ties, under
seal, to be
deemed valid.

Any mortgage, bond, or other security, bearing the common seal of the company, and issued for valuable consideration, shall be binding on the company, notwithstanding any irregularity touching the authority of the directors to issue the same; [and no person, taking any such security, shall be bound to ascertain that the amount then due by the company on mortgage or other securities does not exceed one half of the nominal capital of the company].

The words in brackets will, *mutatis mutandis*, be inserted where the borrowing power is limited.

The above clause is occasionally inserted. *In re Patent File Co.*, 6 Ch. 85. But it would seem to be merely the expression of that which is the law, as settled in a series of cases, of which *The Royal British Bank v. Turquand*, 6 E. & B. 327, is a leading one. The principle on which this case was decided is well known, and has been repeatedly acted upon; namely, that persons dealing with the directors of a company are bound to know the statute regulating it, and to examine the deed of settlement, or, as to companies formed under the Act of 1862, the memorandum and articles of association; but that is all, *e.g.*, they are not bound, where a resolution is necessary to authorise the doing of some act of the directors, to see that it has been passed, nor are they bound to see that the directors have been duly appointed.

Thus, in the case above mentioned, the directors had power to borrow on the bonds of the company such sums, as by a general resolution of the

Forms.

company, might be authorised. They issue a bond for 1,000*l.*, which was not authorised by any resolution of the company. It was held binding on the company. Jervis, C.J., in affirming the decision of the Court below, said : " We may now take for granted, that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement ; but they are not bound to do more. And the party here, on reading the deed of settlement, would find not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorising that which, on the face of the document, appeared to be legitimately done."

So in *Agar v. Athenæum, &c., Society*, 3 C. B. N. S. 725 ; 6 W. R. 277 ; the directors had power to borrow, but only with the consent of an extraordinary general meeting of shareholders. They did borrow by issuing debentures sealed with the seal of the company, and signed by two of themselves ; and it was held that these debentures were binding on the company, although no such authority to borrow had been conferred. Cockburn, C.J., said, that the Court was " bound by the case of *Turquand v. The Royal British Bank*, where the power to borrow was almost identical with this ; and the Court held that a plea founded on an alleged want of a resolution was bad."

So in *Ex parte The Eagle Co.*, 4 K. & J. 549 ; 6 W. R. 779, a claim was made against an assurance society, in respect of an agreement, not under seal, for a policy. By the deed of settlement, policies were to be under seal. The claim was allowed. The judgment of Wood, V.-C., contains the following : " There is no doubt an important distinction to be drawn, and is drawn, in the case of *The Royal British Bank v. Turquand*, between that which, upon the face of it, is manifestly imperfect, when tested by the requirements of the deed of settlement of the company, and that which contains nothing to indicate that those requirements have not been complied with. Thus, where the deed requires certain instruments to be made under the common seal of the company, every person contracting with the company can see at once whether that requisition is complied with, and he is bound to do so ; but where, as in the case I have last referred to, the conditions required by the deed consist of certain internal arrangements of the company, for instance, resolutions at meetings and the like, if the party contracting with the directors finds the acts which they undertake to do, to be within the scope of their power under the deed, he has a right to assume that all such conditions have been complied with. In the case last supposed, he is not bound to inquire whether the resolutions have been duly passed, or the like, otherwise he would be bound to go further back, and to inquire whether the meetings have been duly summoned and to ascertain a variety of other matters into which, if it were necessary to make such inquiry, it would be impossible for the company to carry on the business for which it is formed."

So, also, it has been held that the public is entitled to assume that a person acting as agent of a company has been duly appointed by the directors, where, by the company's deed of settlement, they have power to appoint persons to carry on its business. *Smith v. Hull Glass Co.*, 11 C. B. 897.

The same principle applies to directors, and accordingly it has been held that a person who effects a policy with a life assurance company is

Forms.

not bound to inquire whether the persons signing the policy as directors have been legally appointed directors, or are empowered to use the seal of the company. *In re County Life Assurance Soc.*, 5 Ch. 288.

This decision was followed by the House of Lords in the recent case of *Mahony v. East Holyford Mining Co.*, 7 H. L. 869.

See further, Lindley, 268, *et seq.*

In the *Pooley Hall Colliery, Co.*, 18 W. R. 201; 21 L. T. 690, the directors had power to incur debts, and borrow on mortgage, so that the liabilities of the company should never, without the sanction of a general meeting, exceed 8,000*l.* They issued, without such sanction, debentures when the liabilities exceeded 8,000*l.* Romilly, M.R., held (1869) the debentures "not voidable, but void." The principle laid down in the *Royal British Bank v. Turquand*, *ubi supra*, was not alluded to in the case, and it is submitted that the decision is inconsistent with it. Lindley (p. 286) says that "whether, if the limit is not set by statute, an excessive exercise of a power to borrow would be held altogether invalid, or would be held valid in favour of *bonâ fide* lenders, without actual notice of such exercise, has not yet been determined. But it is difficult to see why the principles of *The Royal British Bank v. Turquand* should not be applied in such case." As to the personal liability of directors borrowing in excess of company's powers, &c., see *Weeks v. Propert*, L. R. 8 C. P. 427.

FORM XLIII.

Acts assented
to by company
not to be
impeached as
ultra vires.

No purchase, sale, contract, or agreement, made or entered into by the directors, or act done by the directors, to which the assent of the company in general meeting shall be given, shall be afterwards impeached or objected to by reason that the same is not within or is opposed to the business and objects of the company, or that a dissolution of the company may be thereby rendered necessary, or on any other ground whatsoever.

A clause to the above effect is sometimes inserted. See *Marshall v. Glamorgan Iron and Coal Co.*, 7 Eq. 137, in which Giffard, V.-C., assumed that it was valid. But see and consider *Hope v. International Financial Society*, W. N. 1876, 257; and *Garden Gully, &c., Co. v. McLister*, 1 App. Cas. 54. See also *supra*, p. 86.

FORM XLIV.

REMUNERATION OF PROMOTER.

Payment to
promoter.

In consideration of the great labour, expenses, and risk which A. B., one of the subscribers of the memorandum of association, has incurred and been put to in and relating to the promotion and formation of the company, and in registering the memorandum and articles of association thereof, the company shall, when and so soon as — shares shall have been allotted, pay to the said A. B., his executors, administrators, or assigns, the sum of —*l.*

See *Croskey v. Bank of Water*, 4 Giff. 317.

FORM XLV.

Forms.

AUDIT OF ACCOUNTS BY COMMITTEE.

Compare with clauses, *supra*, p. 192, *et seq.*

1. The accounts of the company shall be audited by a committee of five members, to be called the Audit Committee. Committee to audit accounts.
2. The members of the first audit committee shall be nominated by the directors out of the general body of members. First members.
Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.
3. The audit committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto. Duties.
4. The audit committee shall have a list delivered to them of all books kept by the company, and they shall, at all reasonable times, have access to the books and accounts of the company; they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the company. Rights of committee.
5. The audit committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors, whether such explanation or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors, at the ordinary meeting. Report.

FORM XLVI.

DISTRIBUTION OF ASSETS IN WINDING UP. PREFERENCE.

Unless the holders of preference shares are given a preference in the distribution of assets, they will stand on a level with the other members in the winding up. *In re London India-rubber Co.*, 5 Eq. 519.

See *supra*, p. 253.

It is comparatively seldom that the articles as originally framed contain any provisions giving a preference in the distribution of assets upon a winding up. Such provisions, however, are common enough in resolutions to increase capital, see *infra*, p. 294; and they are some-

Forms.

times inserted in the case of a reconstruction or amalgamation, see *infra*, "Reconstruction" and "Amalgamation."

In connection with these clauses, it may be well to consider the mode in which surplus assets are dealt with upon a winding up, in the absence of special provisions.

It is the duty of the liquidators in a voluntary, and the Court in a compulsory winding up, to adjust the rights of the contributories *inter se* (Section 133, Subsection 10, and Section 109 of the Companies Act, 1862).

If all the shares are fully paid up, no difficulty can arise; the assets are divided *pro rata*. But generally some shares are fully paid up, some not. The question is how in such case to adjust the rights of the contributories.

It is now well settled that in the absence of special provisions in the articles, or a special contract made on the issue of the shares, the adjustment should, as far as possible, throw the losses on the members in proportion to the *nominal amount* of capital held by them respectively.

Thus, suppose a company with 1,000 shares of 10*l.* each, 400 of which are fully paid up, or to be deemed fully paid up, and 600 paid up to the extent of 5*l.* each, this gives a paid-up capital of 7,000*l.* Suppose that the company is being wound up, and that, after paying all the debts and providing for the expenses of winding up, there remains only 3,000*l.* In such case the loss being 4,000*l.*, *i.e.*, 4*l.* per share, the surplus must be so distributed as to equalise the loss, *viz.* : to holders of fully paid-up shares, 6*l.* a piece = 2,400*l.*; and to the holders of the 600 shares, 1*l.* each = 600*l.* —total, 3,000*l.*

Or suppose, in the same case, the loss to have been 6,000*l.*, *i.e.*, 6*l.* per share. Then the holders of the 600 shares must be called on to pay up 1*l.* per share = 600*l.*, which, added to the 1,000*l.* of assets, will pay the holders of the 400 shares 4*l.* per share, thus placing all the members on a level.

Another way of effecting the adjustment in the first case is, to apply the surplus assets, first, in repaying to the holders of the 400 shares, 5*l.* per share, so that they may stand on same footing as the holders of the 600 shares. The residue will give 1*l.* per share all round.

The principle on which such an adjustment is based, was first settled in the case of the *Anglesea Colliery Co.*, 1 Ch. 555. See also *In re Scinde, &c., Corporation*, 6 Ch. 53, note; *In re Holyford Mining Co.*, Ir. L. R. 3 Eq. 208.

The leading authority is *Maude's Case*, 6 Ch. 51, in which a decision of Malins, V.-C., was reversed on appeal. In that case Mr. Maude and others were the holders of fully paid-up shares of 25*l.* each, in Hodge's Distillery Company. He had applied for shares, and paid up the full amount in cash. There were other shares on which only 20*l.* had been paid up. The articles contained the common clause (22) that a member might advance the money due on his share beyond the sum called for, and receive interest thereon. Mr. Maude applied, in the winding up, that in distributing the assets of the company, he might be repaid the 5*l.* which he had paid upon each share above what the other members had paid before the surplus assets were divided. Mellish, L.J., said, "The real question appears to be, how the losses of the company ought to be borne. Ought they to be borne in proportion to the amount which happened to be paid up by each shareholder at the time when the winding-up order was made, or ought they to be borne in proportion to the subscribed capital, whether the shares happened to be fully paid up or

Forms.

not? In my opinion the surplus ought, according to the true construction of the Act, and of the articles of association of this company, to be distributed so as to divide the losses equally among the two descriptions of shareholders. . . . In my opinion the 22nd article has no bearing on this case, for it does not appear that Mr. Maude agreed to advance any money; but he applied for paid-up shares, they were allotted to him, and he paid the full amount, not treating it as an advance, but as on paid-up shares. . . . In many cases a considerable portion of the shares is expended in buying that which is the foundation of the company; and when the company is wound up, it would be very unjust that the person who had been paid for his property in shares should have to bear the losses, and that none of the losses should fall on the other shareholders. . . . It appears to me that this application ought to be granted." James, L.J., took the same view.

In the case of the *Eclipse Gold Mining Co.*, 17 Eq. 490, the original capital was in 1*l.* fully paid-up shares, and it was all lost. New shares of 1*l.* each were created, and 16*s.* called up thereon. There was, in the winding up a sum of 3,500*l.*, surplus assets to be distributed, and it was contended that out of this 4*s.* per share ought to be paid, in the first place, to the holders of the paid-up shares; but Malins, V.-C., held that the surplus assets must be distributed among the members in proportion to the amounts paid up by them respectively.

By the conditions on which the new shares were issued, it was provided that if the company should be wound up, no call should be made on the holders thereof, except for payment of debts and costs of winding up, and except as aforesaid the new shares were to be deemed ordinary shares and part of the ordinary capital. Hence, there was no special contract with the holders of new shares to prevent the application of the ordinary rule, that surplus assets must be distributed so as to equalise losses. It is difficult to reconcile the decision with the principles laid down in *Maude's Case*; and where new capital is created, it is expedient, when the ordinary rule is not intended to apply expressly, to provide accordingly.

The surplus assets of the company upon the winding up thereof shall be applied: first, in repaying to the holders of the said preference shares the amount paid up thereon; then, in repaying to the holders of the deferred and other shares the amount paid up on such shares; and the residue (if any) shall be divided among the members in proportion to the nominal amount of the capital held by them respectively.

How surplus
assets to be
distributed.
Preference.

FORM XLVII.

DISTRIBUTION OF ASSETS IN WINDING UP. PREFERENCE.

Another form.

If the company shall be wound up the surplus assets shall be applied, in the first place, in repaying to the holders of the A shares the amount paid up thereon, and the residue shall belong to the holders of the B shares.

Preference to
holders of A.
shares.

Forms.**FORM XLVIII.****DISTRIBUTION OF ASSETS IN WINDING UP. QUALIFICATION OF VENDOR'S RIGHTS.**

*How assets to
be distributed.*

In the event of the company being wound up the surplus assets thereof shall be applied : first, in repaying to the holders of the shares, other than those to be issued pursuant to the said agreement of the — day of —, the full amount paid up on the shares held by them respectively ; secondly, in paying to the holders of the shares, to be issued pursuant to the said agreement, the amount credited as paid up thereon ; and the residue (if any) of such surplus assets shall belong to and be divided among the members in proportion to the nominal amount of capital held by them respectively.

FORM XLIX.**DISSOLUTION.**

*When com-
pany to be
dissolved.*

If at any time the directors shall resolve that the winding up of the company is expedient, the company shall be dissolved.

By Section 129 of the Act of 1862, it is provided that a company may be wound up voluntarily.

(1.) Whenever the period (if any) fixed for the duration of the company by the articles of association expires, or whenever the event (if any) occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

(2.) Upon a special resolution.

(3.) Upon an extraordinary resolution.

The object of the insertion of such a clause as above, is to facilitate a winding up. In order to pass a special resolution, or an extraordinary resolution, a very large majority of the members present in person, or by proxy at a meeting, is required. See *infra*, p. 288.

But if such a clause as above is inserted, a simple majority of a general meeting will, under Subsection 1 of the above section, effectually bring the winding up into operation.

Of course, the clause can be modified, so that the event shall be the loss of the original capital, or a resolution of the directors that the company cannot by reason of its liabilities continue its business, or any other contingency ; or it may be provided that the company shall be dissolved at the expiration of a specified term of years, or otherwise.

RESOLUTIONS.

INTRODUCTORY NOTES.

THE regulations of a company generally provide that divers acts shall be done by the company in general meeting—*e. g.*, that officers shall be appointed at the ordinary general meeting, or that the directors may borrow money or declare a dividend or convert shares into stock with the consent of the company in general meeting. See *supra*, p. 178, *Clause* 96, p. 163, *Clause* 54, p. 190, *Clause* 115, p. 162, *Clause* 53, p. 160, *Clause* 45. In such cases the act will be done on the consent given by a resolution of the members present in person, or by proxy, at a general meeting of the company. Whether the meeting should be an ordinary or an extraordinary one must depend on the nature of the business and the regulations [*supra*, p. 166]. The meeting must have been duly called [*supra*, p. 195]. A proper quorum must be present [*supra*, p. 167]. If a poll is demanded regard must be had to the number of votes to which each member is entitled by the regulations of the company.

Ordinary
resolution.

With regard to “special” and “extraordinary” resolutions :—It is extremely common to provide by the regulations that certain acts shall only be done by special resolution of the company, or by extraordinary resolution. And, moreover, the Acts of 1862 and 1867 require or enable a company to do various things by special or extraordinary resolutions, as will be seen in the notes to the following resolutions. See also index under “Special Resolution.”

It will be convenient here to state what is meant by the expressions special resolution and extraordinary resolution respectively :—

1. As to a special resolution : Section 51 of the Act of 1862, provides that :

Mode of
passing special
resolution.

“A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the

regulations of the company to vote, as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed : at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same : notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company : in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company."

Quorum.

It seems that where the articles require a specific quorum to be present at a general meeting a special resolution cannot be passed unless at both the meetings such a quorum be present. See *Cambrian, &c., Co.*, 23 W. R. 405 ; 31 L. T. N. S. 773. It is to be observed that the section provides that a meeting shall for the purposes of the section be deemed to be "duly held," if held in manner prescribed by the regulations of the company, and it would certainly seem that these words render it necessary to comply with any provisions as to quorum in the articles.

If this be the true construction of the section considerable difficulty may arise where the existing members of the company if all assembled would not constitute a quorum for an extraordinary general meeting. This is not an uncommon occurrence, and in such case it follows that no special or extraordinary resolution, even to wind up, can be passed until the provisions of the articles can be complied with.

Of course a resolution which is passed by the votes of members disqualified by the regulations from voting, *e.g.*, by reason of calls unpaid, is invalid. *Cambrian, &c., Co., ubi supra.*

Disqualified members.

As to notices convening meetings to pass resolutions, whether special, extraordinary, or otherwise, see *infra*, p. 305, *et seq.*

Notices of meetings.

As to notices to be given to registrar of joint stock companies upon passing of special resolutions, see *infra*, p. 314, *et seq.*

Notices to registrar.

2. As to an extraordinary resolution : Section 129 of the Act of 1862 provides that :

“For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.” See *supra*, p. 289.

What is an extraordinary resolution.

Forms.

RESOLUTIONS.

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RESOLUTIONS TO ALTER ARTICLES.

Section 50 of the Act provides that :—

" Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter provided, [see *supra*, p. 289], alter all or any of the regulations of the company contained in the articles of association or in the table marked A. in the first Schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company, and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution."

A company cannot by special resolution authorise or ratify an act *ultra vires* the company. *Ashbury, &c., Co. v. Riche*, L. R. 7 H. L. 653; *Hutton v. Scarborough Cliff Hotel Co.*, 13 W. R. 1059; *Hope v. International Financial Society*, W. N. 1876, 257. See further, *supra*, p. 141, *et seq.*

FORM I.

That the articles of association be altered in manner following :—

- (a.) Article 5 shall be cancelled.
- (b.) In article 7 the word "four" shall be substituted for the word "seven."
- (c.) The following article shall be substituted for Article 20, namely "The company may," &c.
- (d.) The following article shall be inserted after article 24, namely, 24a, "The directors may," &c.

Forms.

If a very large number of clauses are cancelled and new ones inserted, it is sometimes provided that : " The articles shall, subject to the preceding alterations, be renumbered throughout and the subsections relettered so far as necessary and all references duly corrected."

FORM II.

That the regulations contained in the table marked A. in the schedule to the Companies Act, 1862, shall no longer apply to the company, and that the following shall henceforth be the regulations of the company.

1. In the interpretation, &c.

[Here will follow the new articles.]

FORM III.

That the existing articles of association be rescinded, and that the following regulations be substituted therefor :

1. In the interpretation, &c.

[Here will follow the new articles.]

It is by no means uncommon to substitute entirely new articles of association, especially when a company limited by shares, having been registered without articles, is governed by Table A. Care, however, must be taken not to insert any clause not warranted by the memorandum and original regulations, *e.g.*, if there was originally no power to create preference shares, the power cannot be taken by special resolution; *supra*, p. 266.

RESOLUTIONS TO INCREASE CAPITAL.

The power to increase the capital is generally made exercisable by the company in general meeting, *i.e.*, by a simple resolution, or by special or extraordinary resolution, or by the company simply. In the last case the directors can generally exercise the power. See *supra*, p. 265.

See further as to increase of capital and creation of preference shares, *supra*, pp. 161 and 265, *et seq.*

Whether the capital be increased by resolution of the company, or by resolution of the directors, notice to the registrar must be given within fifteen days from the date of the passing of the resolution, or in default the company and every director and manager will be liable to a penalty of 5*l.* per day. See further, *infra*, p. 314, Section 34 of the Act.

Forms.**FORM IV.**

That the capital of the company be increased to 50,000*l.* by the creation of 2,000 new shares of 10*l.* each.

FORM V.

That the capital of the company be increased to 25,000*l.* by the creation of 2,000 new shares of 5*l.* each, to be called preference shares, and to confer on the holders thereof the right to a cumulative preferential dividend at the rate of 6 per cent. per annum on the amount for the time being paid up on such shares [which dividend shall be payable half-yearly on the — day of — and — day of —].

FORM VI.

1. That the capital be increased to 30,000*l.* by the creation of 10,000 new shares of 1*l.* each.

2. That the new shares be called preference shares, and that the holders thereof be entitled to a preferential dividend, at the rate of 5*l.* per cent. per annum, payable out of the profits of each year, without any right in case of deficiency to resort to the profits of subsequent years.

The following may be used instead of the above :—

“That the new shares shall be called preference shares, and that the holders thereof shall be entitled to be paid out of the profit of each year a preferential dividend for such year at the rate of 5*l.* per cent.” It is sometimes preferred because it does not expressly call attention to the contingency of the profits being deficient. In either case the dividend will be non-cumulative. See *supra*, p. 252, and p. 253.

3. That in the event of the company being wound up, the holders of the said preference shares shall be entitled to have the surplus assets of the company applied in the first place in repaying to them the amount paid up on the preference shares held by them respectively, but that the residue of such surplus assets shall belong to and be divided among the other members of the company.

FORM VII.

1. That the capital of the company be increased to 100,000*l.* by the creation of 3,000 new shares of 10*l.* each.

Forms.

2. That the new shares be called A. shares, and that the holders thereof be entitled to a cumulative preferential dividend, at the rate of 6 per cent. per annum on the nominal amount of such shares, which dividend shall be payable half-yearly, on the — day of — and — day of —.

3. That the company shall be entitled to create further new shares to rank in all respects *pari passu* with the said A. shares, but so that the aggregate amount of the A. shares for the time being issued, and of such further new shares, shall not at any one time exceed one-half the amount of the paid-up capital of the company.

Where it is desired to reserve such a power as above, express provision should be made accordingly, otherwise the company will not be permitted to derogate from the rights of the holders of the preference shares. Thus in the recent case of the *Argentine Tramways Co., Limited*, the capital was divided into preferred and deferred shares. The latter (100,000*l.*) had been issued as paid-up to the vendor. Arrangements were made by the directors for the surrender of the deferred shares in consideration of 20,000*l.* new preferred shares to rank in all respects equally with the original preferred shares. Pursuant to this arrangement a resolution for the creation of the new shares was unanimously passed at an extraordinary meeting of the company and a further meeting for its confirmation was called. Meantime the action of *Harper v. Paget* was brought by one of the holders of original preferred on behalf of himself and all other the preferred shareholders in the company against Lord Alfred Paget and other directors and the company, seeking for an injunction to prevent the carrying of the resolutions into effect.

The following order was made 16 March, 1876, on motion for an injunction before Jessel, M. R.

"This Court doth declare that it is *ultra vires* of the defendants, the *Argentine Tramways Co., Limited*, to issue new preferred shares to rank in priority to or equally with the original preferred shares of the company either in exchange for deferred shares or otherwise. And it is ordered that an injunction be awarded against the defendants, Lord A. P., &c., the directors of the said company, to restrain the defendants from issuing any such new preferred shares in the company, either in exchange for deferred shares or otherwise. And it is ordered that the defendants pay to the plaintiff his costs of this action, including therein his costs of the said motion, such costs to be taxed by the taxing-master." [A. 599.]

4. That the A. shares shall not confer any right of voting at any general meeting of the company, nor shall they qualify any person to be a director of the company.

5. That in the event of the company being wound up the surplus assets thereof shall be applied in the first place in repaying to the holders of the A. shares, and of any other shares entitled to rank *pari passu* with them, the full amount

Forma- paid up thereon, and that, subject as aforesaid, such surplus assets shall belong to and be divided among the other members of the company.

6. That the directors be and they are hereby authorised to issue the said 4,000 shares to such persons, and to be paid for by such instalments or otherwise as they think fit, and without being bound to offer the same or any of them to existing members of the company.

FORM VIII.

1. That the capital, &c.

2. That the said new shares be called "new preference guaranteed shares," and that the holders thereof be entitled to a cumulative preferential dividend at the rate of 12 per cent. per annum, on the amount for the time being paid up on such shares, such dividend to be payable in priority to all other dividends except those payable to the holders of the existing preference shares.

3. That in the event of the company being wound up [*supra*, p. 293, *mutatis mutandis*].

FORM IX.

1. That the capital, &c.

2. That the said shares be called preference shares, and that the holders, &c.

3. That every holder of a debenture or debentures of the company shall be entitled upon the surrender thereof to the directors, before the — day of — next, to have allotted to him so many of the said preference shares as shall be equal, as nearly as may be, in nominal amount to the aggregate amount of the principal monies and interest due to him in respect of such debenture or debentures.

4. That the amount so due shall be credited as paid up on the shares so allotted.

5. That any of the said preference shares not allotted before the — day of — next, may be disposed of in such manner as the directors shall think fit.

CONVERSION OF SHARES INTO STOCK.

By Section 12 of the Act :—

Any company limited by shares may so far modify the conditions con-

tained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution as (*inter alia*) to convert its paid-up shares into stock.

The articles generally empower a company to convert any of its paid-up shares into stock. Sometimes the sanction of the company in general meeting or by special or extraordinary resolution is required, but where this is not the case the directors can generally exercise the power under such a clause as 113, *supra*, p. 183.

As to notice of conversion to be given to Registrar of Joint-Stock Companies, see *infra*, p. 313.

Forms.

FORM X.

That the whole of the preference shares in the capital of the company be converted into stock, to be called preference stock.

If the articles do not contain proper provisions providing for the event of shares being converted into stock, it will be necessary to alter them by inserting the usual clauses. See *supra*, p. 160.

CONSOLIDATION OF SHARES.

Section 12 of the Act of 1862 permits any company limited by shares so far to modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned, as to (*inter alia*) consolidate and divide its capital into shares of larger amount than its existing shares. It is usual to insert the necessary authority in the articles, (see *supra*, p. 162,) although it is but seldom exercised. If not inserted a single special resolution is sufficient. See *supra*, p. 265.

FORM XI.

1. That the shares in the capital of the company be consolidated in such manner that every five of the existing shares shall constitute one 5*l.* share, upon which the sum of 5*l.* shall be credited as having been paid up.

2. That the existing certificates of shares be called in by the directors and cancelled, and that new certificates be issued, subject to the provisions contained in clauses of the articles of association.

SUBDIVISION OF SHARES.

Sections 21 and 22 of the Act of 1867 provide as follows:—

Any company limited by shares, may *by special resolution*, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as, by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association.

Provided that in the subdivision of the existing shares the proportion

Forms.

between the amount which is paid and the amount (if any,) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Section 22 provides that : The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution ; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding 1*l*. for each copy in respect of which such default is made, and every director and manager of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

Before this enactment it was illegal to subdivide shares. *Holmes' Case*, 2 Ch. 714 ; *Fielding and Remington's Case*, *Ibid*. See also *Scwell's Case*, 3 Ch. 131.

In *Holmes' Case*, *ubi supra*, Cairns, L. J., said : " A consolidation and increase of the nominal value of shares preserves the same amount of capital but may bring it into fewer hands, and may be more beneficial to creditors by making the capital more easy of collection. A subdivision of shares, on the other hand, if valid at all, must be valid to whatever extent it may be carried, and thus creditors of the company may, upon a winding up, be left, and left without any previous notice given to them by the Act of Parliament, with the unpaid capital of the company scattered through such a number of hands that the sum recoverable from each would not pay for the trouble and expense of collection."

However, the illegality, prior to the Act of 1867, did not merely depend on this view. To subdivide the shares was an alteration of the conditions contained in the memorandum, and as such was prohibited by Section 12 of the Act of 1862. See *supra*, p. 82.

For clause to be inserted in articles giving the requisite power, see *supra*, p. 162.

The power is to be exercised by special resolution ; hence if the articles do not contain the necessary authority two special resolutions are necessary, as in the case of a reduction of capital. See *infra*, p. 300.

Notice of a special resolution subdividing the shares must be given to the Registrar of Joint-Stock Companies. See *infra*, p. 314.

FORM XII.

That each of the existing 10*l*. shares be divided into two 5*l*. shares, upon each of which the sum of 4*l*. shall be credited as paid up.

FORM XIII.

That each of the existing 50*l*. shares be divided into five fully paid up 10*l*. shares.

FORM XIV.

That each of the existing shares of the company be divided

into two shares of 5*l.* each, one of which shall be called a preference share and the other an ordinary share.

Forms.

That the holders of the said preference shares shall be entitled to be paid out of the profits of each year a preferential dividend at the rate of 5 per cent. for such year, and that the surplus profits of each year shall be applied in payment of dividends on the said ordinary shares.

The above resolutions would not seem to offend against the principles on which *Hutton v. Scarborough Cliff Hotel Co.* was decided. See *supra*, p. 266. It would not seem to be an alteration of the constitution of the company, or a fraud on the minority, or otherwise *ultra vires* the company. However, the point remains to be decided. The Anglo-American Telegraph Company, Limited, passed special resolutions, in 1876, for the division of its capital (stock) into preferred and ordinary stock; but the division was not compulsory: the resolution merely authorised the directors to receive the surrender of his stock from any member willing to surrender, and to issue to him preferred and ordinary stock in equal moieties to same nominal amount.

See the power to subdivide shares contained in the specimen Act for the reconstruction of a company given *infra*, among forms relating to "Reconstruction."

REDUCTION OF CAPITAL.

The capital of a company limited by shares cannot be reduced except under the Act of 1867. The amount of capital is one of the conditions contained in the memorandum, and although the Act of 1862 (Section 12, see *supra*, p. 82,) permitted of certain alterations in those conditions, a reduction of capital was not one. The Act of 1867 (Section 9) provides that any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution shall come into operation until an order of the Court confirming the reduction is registered with the Registrar of Joint Stock Companies. After the passing of the resolution the words "and Reduced" must be added to the name—Section 10. A petition must then be presented to the Court for the confirmation. See form of petition, *infra*, among "Petitions." As to the further proceedings, see Buckley, 465, *et seq.*; Pemberton, p. 687, *et seq.*; Daniel Ch. Pr., Vol. II. p. 1978, *et seq.*

The power to reduce its capital cannot be exercised except by special resolution. Hence it is impossible to delegate the power to the directors as in the case of an increase of capital. Thus where the articles provide simply that "The company may increase the capital," and there is a general delegation of powers to the directors, they can, by resolution, increase the capital. But if the articles provide that "The company may reduce the capital," the reduction cannot be effected without a special resolution of the company.

If the articles do not contain power to reduce the capital they must be altered by special resolution so as to give the necessary power, and then a further special resolution must be passed resolving on the reduction. *West India, &c., Co.*, 9 Ch. 11, n. But two special reso-

Forms.

lutions can, it would seem, be passed in three meetings. Thus a meeting (1) is called to alter the articles by empowering the company to reduce its capital; a meeting (2) is subsequently called to confirm the resolution passed at meeting (1), and to pass a further resolution reducing the capital; last, a meeting (3) is called to confirm resolution reducing capital passed at meeting (2). This is the plan now commonly adopted. See notices, *infra*, p. 308.

It takes many months generally to effect the reduction, *e.g.*, from six months to a year. In a recent case (*The Crimble Spinning Co.*) the reduction was effected in the short space of four months.

For cases in which resolutions to reduce capital have been confirmed by the Court, see *In re Sharp, Stewart, & Co.*, 5 Eq. 155; *In re Estates Co.*, 5 Ch. 407; *In re Dunaberg, & Co.*, 20 L. T. 103; *In re Credit Foncier of England*, 11 Eq. 356.

Some persons frame a resolution for reducing capital as follows:—

“That the conditions contained in the memorandum of association of the company be modified by reducing,” &c., but there is nothing to render this necessary. The Court has confirmed many resolutions not so framed.

As to what is a reduction of capital, see *infra*, “Petitions,” Precedent I.

FORM XV.

That the capital of the company be reduced to 50,000*l.* by reducing the nominal amount of each share from 10*l.* to 5*l.*

FORM XVI.

That the capital of the company be reduced from 100,000*l.*, divided into 10,000 shares of 10*l.* each, to 50,000*l.*, divided into 10,000 shares of 5*l.* each.

FORM XVII.

1. That the capital of the company be reduced from 200,000*l.* to 100,000*l.*

2. That the said reduction be effected by repaying to the members the sum of 10*l.* per share, and reducing the nominal amount of each share to 10*l.*

FORM XVIII.

That the capital of the company be reduced from 50,000*l.* to 30,000*l.*, by returning to the holders of the shares numbered — to — inclusive, which have been fully paid up, the sum of 2*l.* per share, and by reducing the nominal amount of all the shares from 5*l.* to 3*l.*

Forms.

FORM XIX.

Resolution declaring the conditions on which share warrants will be issued.

The following are conditions suitable to be made by the directors under Clause 32, *supra*, p. 156. If the words within brackets in that clause are not struck out the conditions must be submitted to the company in general meeting for its approval.

That the following conditions as to the issue of share warrants be made pursuant to Clause — of the articles of association of the company. Upon whose request warrant to be issued.

1. No share warrant shall be issued except upon a request in writing by the person for the time being upon the register of members as the holder of the share or stock in respect of which the share warrant is to be issued.

For form of share warrant, see *infra*, Certificates.

There can be no doubt that if the company issue a share warrant to a purchaser not entitled, it will be estopped from denying the right of any purchaser from him. See further, introductory notes to "certificates." The utmost care ought therefore to be used.

2. The request shall be in such form, and authenticated by such statutory declaration or other evidence as to the identity of the person making the same, and of his right or title to the share or stock, as the directors shall from time to time require, and shall be lodged at the office of the company. Regulations as to request.

3. Before the issue of a share warrant the certificate (if any) then outstanding in respect of the shares or stock intended to be included in it shall be delivered up to the directors unless they dispense with this condition. Certificates to be surrendered.

If the certificate is left outstanding it will be more or less a risk of the company, and the directors may reasonably require an indemnity.

4. Any person applying to have a share warrant issued shall at the time of application pay to the directors the stamp duty payable in respect thereof, and also such fee, not exceeding 1s., for each share warrant as the directors shall from time to time fix. Stamp duty.

By virtue of the Companies Act, 1867, Section 33, "There shall be charged on every share warrant a stamp duty of an amount equal to

Forms.

three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock."

By 33 & 34 Vict. c. 97, s. 127 :—"If a share warrant is issued without being duly stamped the company issuing the same, and also every person who at the time when it is issued is the managing director, or secretary, or other principal officer of the company, shall forfeit the sum of 50*l.*"

As to worn or
defaced
warrants.

5. If any share warrant or coupon be worn out or defaced, the directors will, upon the surrender thereof for cancellation, issue a new one in its stead.

As to lost or
destroyed
warrant.

6. If any share warrant or coupon be lost or destroyed, the directors will, upon the loss or destruction being established to their satisfaction, and upon such indemnity being given to the company as they shall think adequate, issue another share warrant or coupon in lieu thereof.

Fee on issue
of new
warrant.

7. In every case provided for by conditions 5 and 6 a fee of 2*s.* 6*d.*, exclusive of all expenses attending the investigation of evidence of loss or destruction, and of an indemnity to the company, shall be paid to the company by the person availing himself of those conditions.

On what
conditions
holder of
warrant may
vote.

8. No person shall as bearer of a share warrant be entitled to attend, or vote, or exercise in respect thereof any of the rights of a member, at any general meeting of the company, or sign any requisition for or aid in calling any general meeting, unless three days at least before the day appointed for the meeting, in the first case, and unless before the requisition is left at the office, in the second case, he shall have deposited the share warrant at the office, or such other place as the directors appoint, together with a statement in writing of his name and address, and unless the share warrant shall remain so deposited until after the general meeting, or any adjournment thereof shall have been held. The names of more than one as joint holders of a share warrant shall not be received.

This and the following clause are found to work well. They prevent personation, and are convenient both to the holders of share warrants and to the company. The certificate requires no stamp.

Certificate of
deposit.

9. There shall be delivered to the person so depositing a share warrant a certificate stating his name and address, and the number of shares or the amount of stock, represented by the share warrant so deposited by him, and such certificate

shall entitle him to attend and vote at a general meeting in the same way as if he were a registered member of the company in respect of the shares or stock specified in the said certificate. Upon delivering up of the said certificate to the company the share warrant in respect whereof it shall have been given, shall be returned.

The certificate may be as follows :—

The — Company, Limited.

No. —.

This is to certify that A. B., of —, has, in accordance with the regulations of the company, deposited the undermentioned share warrants, in respect of which he is entitled to attend the general meeting of the company, to be held at —, on the — day of —.

Dated, &c.

—, Secretary.

Particulars of share warrants deposited.

10. No person as bearer of any warrant shall be entitled to exercise any of the rights of a member (save as hereinbefore expressly provided in respect of general meetings), without producing such warrant and stating his name and address, and (if and when the directors so require) permitting an indorsement to be made thereon of the fact, date, purpose, and consequence of its production.

When warrant
to be produced.

The above clause is occasionally used.

11. If the bearer of a share warrant shall surrender it to be cancelled, and shall therewith lodge at the office a declaration in writing, signed by him, in such form, and authenticated in such manner as the directors require, requesting to be registered as a member in respect of the shares or stock specified in the said share warrant, and stating in such declaration his name, address, and occupation, he shall be entitled to have his name entered as a member in the register of members of the company in respect of the shares or stock specified in the share warrant so surrendered.

Surrender of
warrants.

Section 29 of the Act of 1867 provides that "The bearer of a share

Forms.

warrant shall, subject to the regulations of the company, be entitled on surrendering such warrant for cancellation, to have his name entered as a member in the register of members.—(hence it is necessary to provide for the surrender.)—and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrants being surrendered and cancelled.”

**Meaning of
share warrant.**

12. In the above conditions share warrant means a warrant in respect of a share or shares, or of stock of the company, issued pursuant to the Companies Act, 1867, and the articles of association of the company.

NOTICES.

INTRODUCTORY NOTES.

THE regulations of a company generally provide that notice shall be given to the members of all general meetings, and also upon or in relation to divers other matters. The mode of serving or giving such notices is duly provided for by the articles (*supra*, p. 195), or by Table A, when it applies (*supra*, p. 248).

By Section 64 of the Act, "any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print." The following are some of the forms of notices in general use:—

NO.	FORMS.	PAGE.
1.	Allotment of shares	304
2.	Call	305
3.	Forfeiture	305
4.	Ordinary meeting	305
5.	Extraordinary meeting	306
6.	" "	306
7.	Extraordinary meeting to pass special resolution	307
8.	" " to confirm	307
9.	" and ordinary meetings to be held same day	308
10. }	Meetings to pass special resolutions	309
11. }	Extraordinary meetings to pass special resolutions on re-construction or amalgamation. Section 161 of the Act	310
12.	By dissentient member. Section 161 of the Act	310
13. }	For meeting to pass extraordinary resolution for winding up	311
14. }	Requisition of members to directors for extraordinary meeting	312
15. }	Notice by members convening meeting	312
	To registrar of joint-stock companies—	
16.	Office	313
17.	Change of office	313
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18.	Increase of capital	314
19.	Special resolution	315
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Forms.

FORM I.

NOTICE OF ALLOTMENT OF SHARES.

The — Company, Limited.

No. —.

SIR,—I am directed to inform you that, in compliance with your application, dated, &c., — shares of 10*l.* each in The — Company, Limited, have been allotted to you.

I am, &c.,

—, Secretary.

To —, &c.

This requires a penny stamp. See Stamp Act, 1870.

The ordinary form of application is as follows:—

The — Company, Limited.

Form of Application for Shares.

To the Directors of the — Company, Limited.

Gentlemen,

Having paid to your credit at the — Bank, — Street, —, the sum of — pounds, being a deposit of — per share on — shares in the above company, I hereby request you to allot me that number of shares; and I agree to accept the same, or any less number that may be allotted to me, subject to the memorandum and articles of association, and to pay the further sum of —*l.* per share on allotment; and I request that my name may be placed upon the register of members in respect of the shares so allotted.

Name in full.

Usual signature.

Address.

Profession or business.

Date.

Banker's Receipt for Deposit on Application.

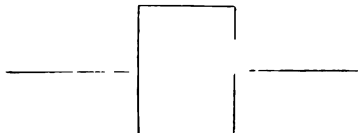
The — Company, Limited.

Offices: — Street, &c.

Received this — day of —, the sum of —*l.*, being a deposit of —*l.* per share on — shares of —*l.* each in the above company.

For the — Bank.

£ : :
 —————
 —————



FORM II.

Forms.

NOTICE OF CALL.

The — Company, Limited.

No. —, — Street, &c.

SIR,—I am directed to inform you that at a meeting of the directors of this company held here on, &c., a call of —l. per share was made upon all the members, and that the same will be payable at the — Bank, No. —, Lombard Street, London, E. C., or at the office of the company, on the — day of — next.

The amount payable by you in respect of such call on the — shares held by you is —l.

I am, &c.,

—, Secretary.

To —.

FORM III.

NOTICE BEFORE FORFEITURE FOR NON-PAYMENT OF CALL.

The — Company, Limited.

No. —, — Street, &c.

SIR,—In my letter of the — day of —, I informed you that at a meeting, &c.

I am now instructed to inform you, that the directors require you on or before the — day of —, to pay the said sum of £—, together with interest thereon, at the rate of — per cent. per annum from the said — day of —, and that in the event of non-payment of the said call and interest, on or before the said — day of —, at the place aforesaid, the shares in respect of which such call was made, will be liable to be forfeited.

I am, &c.,

—, Secretary.

To —, &c.

FORM IV.

NOTICE OF ORDINARY GENERAL MEETING.

The — Company, Limited.

Notice is hereby given that the fourth ordinary general

Forms. *meeting of The — Company, Limited, will be held at the — Hotel, — Street, London, E. C., on Monday, the — day of —, 1877, at — o'clock in the afternoon [for the purposes following, namely, to receive and consider the annual statement of accounts and balance-sheet, and the reports of the directors and auditors thereon, to elect directors and other officers in the place of those retiring by rotation, to sanction the declaration of a dividend and] to transact the [other] ordinary business of the company.*

By order.

Dated, &c.

No. —, — Street, &c.

A. B., Secretary.

If the articles only require the objects of an extraordinary meeting to be specified in notices calling general meetings, the words in brackets can be omitted.

FORM V.

NOTICE OF EXTRAORDINARY GENERAL MEETING.

The — Company, Limited.

Notice is hereby given, that an extraordinary general meeting of The — Company, Limited, will be held at, &c., on, &c., at — o'clock in the afternoon, when the subjoined resolution will be proposed.

Resolution.

That, &c. [*set it out.*]

No. —, — Street, &c.

By order.

[Office of Company].

A. B., Secretary.

FORM VI.

Another form of notice frequently adopted is as follows :—

The — Company, Limited.

Notice is hereby given, that an extraordinary meeting of the above-named company will be held at, &c., on, &c., at — o'clock in the afternoon, for* the purpose of considering, and, if thought fit, passing a resolution authorising the directors [*e.g.*, “to increase the capital to —£ by the creation of — new

shares of —l. each," or "to raise the sum of —l., by the issue of mortgage debentures or otherwise."] Forms.

Dated, &c.

By order.

No., &c.

A. B., Secretary.

- Or "when resolutions will be proposed for, &c."

FORM VII.

NOTICE OF EXTRAORDINARY GENERAL MEETING FOR PASSING SPECIAL RESOLUTION.

The — Company, Limited.

Notice is hereby given that an extraordinary general meeting of The — Company, Limited, will be held at [*e.g.*, "the Terminus Hotel, Cannon Street, in the City of London," or "the registered office of the company, No." &c.], on — day of —, 1877, at — o'clock in the afternoon, when the subjoined resolution will be proposed.

Should the resolution be passed by the required majority, it will be submitted for confirmation as a special resolution to a second extraordinary meeting, which will be subsequently convened.

Resolution.

That, &c.

[*Here set out the resolution.*]

By order of the Board.

Dated —.

A. B., Secretary.

No. —, — Street, —.

Another form very generally adopted is to give notice of a meeting as above, "for the purpose of considering, and, if thought fit, passing *special resolutions* to," &c. The form above appears the more correct, but the last mentioned is no doubt sufficient. The notice ought to inform the members, directly or indirectly, that the object is to pass special resolutions. Both the above forms comply with this condition, and are in use.

FORM VIII.

NOTICE OF EXTRAORDINARY GENERAL MEETING FOR CONFIRMING SPECIAL RESOLUTION.

The — Company, Limited.

Notice is hereby given, that an extraordinary general

Forma. meeting of The — Company, Limited, will be held at &c., on the 1st of February, 1877, when the subjoined resolution, which was passed at the extraordinary general meeting of the company held on the — of January, 1877, will be submitted for confirmation as a special resolution.

That, &c.

[Set out resolution as passed.]

By order.

Insert, &c.

A. B., Secretary.

No. —, — Street, &c.

FORM IX.

NOTICE OF ORDINARY AND EXTRAORDINARY GENERAL MEETINGS TO BE HELD ON SAME DAY.

The — Company, Limited.

Notice is hereby given, that an extraordinary general meeting of the — Company, Limited, will be held at, &c., on, &c., at — o'clock in the afternoon, when the subjoined resolution, which was passed at the extraordinary meeting of the company, held on, &c., will be submitted for confirmation as a special resolution.

And notice is hereby also given that at the same place, and on the same day, at — o'clock in the afternoon, or so soon afterwards as the extraordinary general meeting shall be concluded, the fourth ordinary general meeting of the company will be held for the purpose of [see *supra*, p. 306] transacting the ordinary business of the company.

By order.

Dated, &c.

A. B., Secretary.

No. —, — Street, &c.

FORM X.

NOTICE OF EXTRAORDINARY GENERAL MEETINGS FOR PASSING TWO SPECIAL RESOLUTIONS IN THREE MEETINGS.

See *supra*, p. 300.

Notice of Meeting.

The — Company, Limited.

Notice is hereby given, that an extraordinary general meeting, &c., when the subjoined resolution will be proposed.

Should the said resolution be passed by the required majority, it will be submitted for confirmation as a special resolution to a second extraordinary meeting to be subsequently convened. **Forms.**

Resolution.

That the articles of association of the company be altered by the insertion therein immediately after Article 10 of the following Article, namely :—

The company may from time to time, by special resolution, reduce the capital.

FORM XI.

Notice of Meeting, 2.

The — Company, Limited.

Notice is hereby given, that an extraordinary general meeting of The — Company, Limited, will be held, &c., when the sub-joined resolution, which was passed at the extraordinary meeting of the company held on the — inst., will be submitted for confirmation as a special resolution.

Resolution.

That the company may, from time to time, by special resolution, reduce the capital.

If the aforesaid resolution shall be duly confirmed, the following resolution will be proposed, and, if passed by the requisite majority, will be submitted for confirmation as a special resolution to a subsequent extraordinary general meeting to be duly convened.

Resolution.

That the capital of the company be reduced from —l. divided into — shares of —l. each, to —l. divided into — shares of —l. each.

By order.

Dated, &c.

A. B., Secretary.

No. —, &c.

Notice of Meeting, 3.

This will be as above, No. VIII.

Forms.**FORM XII.****RECONSTRUCTION AND AMALGAMATION.**

Notices convening meetings to pass special resolutions with a view to winding-up and selling under Section 161 of the Act will be as above, pp. 307, 308.

For form of resolutions *infra*, under "Reconstruction" and "Amalgamation."

Where a specified agreement is to be approved, and the resolution does not state the nature of the agreement, it will be necessary to issue with the notice a circular containing an explanation, or the notice itself may state the chief provisions of the agreement. In such case the notice may also state that, "A copy of the agreement can be inspected at the office of Messrs. —, the company's solicitors."

Where, however, the resolutions to be passed are similar to those *infra*, "Reconstruction," Scheme L, and are set out in the notice, no further explanation is necessary.

The notice in the circular, or the resolutions, ought in any case to state or show that the plan is to be carried out under Section 161 of the "Companies Act, 1862." *Imperial Bank of China, &c. v. Bank of Hindustan, &c.*, 6 Eq. 99; *Fur's Case*, 6 Ch. 193. See further, *infra*, introductory notes to "Reconstruction" and "Amalgamation" respectively.

FORM XIII.**NOTICE BY DISSIDENT MEMBER PURSUANT TO SECTION 161
OF THE ACT OF 1862.**

In the matter of the Companies Act, 1862.

And in the matter of The — Company, Limited.

To —, and —, the liquidators of the above-named company.

Take notice that I dissent from the special resolutions of the said company, passed and confirmed at general meetings thereof, held on the — day of —, and — day of — respectively; and I hereby require you either to abstain from carrying such resolutions into effect, or to purchase the interest in the said company, held by me at a price to be determined in accordance with Section 162 of the above-mentioned Act.

A. B., of, &c.

Dated, &c.

See *Anglo-Italian Bank v. De Rosaz*, L. R. 2 Q. B. 452; *De Rosaz v. Anglo-Italian Bank*, L. R. 4 Q. B. 462; and *infra*, introductory notes to "Reconstruction."

FORM XIV.

Forms.

NOTICE OF EXTRAORDINARY GENERAL MEETING TO PASS AN
 • EXTRAORDINARY RESOLUTION FOR VOLUNTARY WINDING-
 UP, PURSUANT TO SECTION 129, SUBSECTION 3, OF THE
 ACT OF 1862.

The — Company, Limited.

Notice, &c.

See *supra*, p. 306, No. V.

Resolutions.

1. That it has been proved to the satisfaction of this meeting, that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.

2. That the company be wound up voluntarily, and that — and — be, and they are hereby appointed, liquidators for the purposes of such winding-up.

The above resolutions, if passed by the requisite majority, are intended to take effect under Subsection 3 of Section 129 of the Companies Act, 1862.

By order.

Dated, &c.

—, Secretary.

No. —, &c.

It is essential to the validity of an extraordinary resolution for winding-up pursuant to Section 129, that the notice should give the members notice, expressly or impliedly, that the resolution is to take effect under Section 129, Sub-section 3, and consequently will not require confirmation at a subsequent meeting. *In re Bridport Old Brewery Co.*, 2 Ch. 194; *In re Silkstone Full Co.*, 1 Ch. Div. 38. Probably the above notice would be sufficient, even though the reference to the section were omitted. Sometimes the following form is adopted :—

FORM XV.

The — Company, Limited.

Notice is hereby given, that an extraordinary general meeting [*supra*, p. 306], for the purpose of passing as an extraordinary resolution, pursuant to Subsection 3 of Section 129 of the Companies Act, 1862, the subjoined resolution, and of appointing liquidators, and fixing their remuneration.

Resolution.

That it has been proved, &c.

Dated, &c.

No. —, &c.

By order.

A. B., Secretary.

Forms.

It has been held that where a company passes a valid resolution to wind up, it may appoint liquidators at the meeting at which it passes the resolution, although the intention to appoint liquidators was not mentioned in the notice convening the meeting. *In re Welsh Flannel and Tweed Co.*, 20 Eq. 360.

FORM XVI.**REQUISITION OF MEMBERS FOR A GENERAL MEETING.**

See *supra*, p. 165, Clause 61.

To the Directors of the — Company, Limited.

We, the undersigned members of the above-named company, holding in the aggregate — shares and upwards in the capital thereof, do hereby, in pursuance of Article — of the articles of association of the company, request you to call an extraordinary general meeting of the company, to be held on Monday, the —th day of June, 1877, at six o'clock in the afternoon, for the purpose of considering, and, if thought fit, passing, the subjoined resolution.

Resolution.

That, &c. [*set it out.*]

Dated, &c.

A. B.

C. D.

E. F.

FORM XVII.**NOTICE BY MEMBERS CALLING MEETING.**

The — Company, Limited.

Whereas, on the — day of —, 18—, we, the undersigned, holding in the aggregate — shares and upwards, in The — Company, Limited, duly deposited a requisition in writing under our hands, requiring the directors to convene an extraordinary general meeting of the company, for the purpose of considering, and, if thought fit, passing the subjoined resolution; and whereas the directors have failed to convene an extraordinary general meeting within twenty-one days from the time of such deposit: NOW THEREFORE, in exercise of the power for this purpose, given to us by Article 70 of the articles of association of the company, We do hereby give notice that an extraordinary general meeting of the company will be held at, &c., on, &c., at — o'clock in the afternoon, for the

purpose of considering, and, if thought fit, passing the sub-joined resolution.

Forms.

Resolution.

That, &c.

Dated, &c.

A. B.

C. D.

E. F.

NOTICES TO THE REGISTRAR OF JOINT-STOCK COMPANIES.

The Act requires a considerable number of notices to be given to the registrar. Every such notice requires a 5s. stamp. See Table B. in the first schedule to the Act of 1862, and *supra*, p. 93. The notices are in many cases made out on skeleton forms supplied by the registration agents.

The following are some of the cases in which a notice must be given :—

Notice as to Office.

Section 39 of the Act provides that : “ Every company under this Act shall have a registered office, to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.”

And Section 40 provides that : “ Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act, with respect to having a registered office.”

The ordinary form of notice is as follows :—

FORM XVIII.

The — Company, Limited.

To the Registrar of Joint Stock Companies :—

The — Company, Limited, hereby give you notice, in accordance with the Companies Act, 1862, that the registered office of the company is situated at, &c.

A. B., Secretary.

Dated, &c.

FORM XIX.

The notice on change of office is the same as above, only that the word “ now ” is inserted before the word “ situated.”

Notice of Consolidation of Shares and Conversion of Shares into Stock.

By Section 28 of the Act : “ Every company under this Act having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any

Forms.

portion of its capital into stock, shall give notice to the registrar of joint-stock companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted."

Notice of Increase of Capital or in Number of Members.

Section 34 of the Act is as follows: "Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase shall have been authorised, and in case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the registrar shall forthwith record the amount of such increase of capital or members: if such notice shall not be given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

The usual form of notice is as follows:—

FORM XX.

The — Company, Limited.

To the Registrar of Joint Stock Companies:—

The — Company, Limited, hereby give you notice, that by a resolution of the company in general meeting, passed the — day of — [*the form must be varied if the increase is effected by special resolution, or by resolution of the directors*], the nominal capital of the company has been increased by the addition thereto of the sum of £—, divided into — shares of £— each, beyond the registered capital of £—.

A. B., Secretary.

Dated, &c.

In addition to a 5s. registration stamp, a notice of increase of capital or in number of members must be stamped as above mentioned, p. 93.

Notice of Special Resolution.

By Section 53 of the Act it is provided that: "A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the registrar of joint-stock companies, and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty."

The following is the form used :—

Forms.

FORM XXI.

(Copy.)

Special Resolutions.

The — Company, Limited.

Passed —th —, 1877. Confirmed —th, —, 1877.

At an extraordinary general meeting of The — Company, Limited, duly convened and held at, &c., on the —th day of —, 1877, the subjoined special resolution was duly passed, and at a subsequent extraordinary general meeting of the said company, also duly convened and held at the same place on the —th day of —, 1877, the subjoined special resolution was duly confirmed.

“That,” &c.

—, Secretary.

FORM XXII.

Notice of consent by company in course of being dissolved to registration of another company by same name.

To the Registrar of Joint Stock Companies :—

I, the undersigned, being the liquidator of the A. Company, Limited, give you notice that the said company is in course of being dissolved, and I hereby, under the provisions of the Companies Act, 1862, Section 20, and on behalf of the company, testify its consent to the registration of a new company, by the name of the A. Company, Limited.

A. B., Liquidator.

C. D., Secretary.

Dated, &c.

The above is the ordinary form. The registrar requires it to be signed by the liquidators, or by two of the directors, or by the whole of the members, when the subscribers to the memorandum of association are the only members, or by any other person duly authorised at a general meeting, the date of which should be given, and to be countersigned by the secretary (if any).

See further, *supra*, p. 79, and *infra*, introductory notes to “Reconstruction” and “Amalgamation.”

CERTIFICATES.

INTRODUCTORY NOTES.

By Section 31 of the Act: A certificate under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified, and Section 32 provides for the keeping of a register of members. "This power of granting certificates is to give shareholders the opportunity of more easily dealing with their shares in the market, and to afford facilities to them of selling their shares by at once showing a marketable title, and the effect of this facility is to make the shares of greater value. The power of giving certificates is, therefore, for the benefit of the company in general; and it is a declaration by the company to all the world [see *infra*, p. 394, *et seq.*] that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the company, and it is given by the company with the intention that it should be so used by the person to whom it is given, and acted upon in the sale and transfer of shares." *Per Cockburn, C. J. In re Bahia &c. Railway Co.*, L. R. 3 Q. B. 595.

Certificates
primâ facie
evidence of
title.

Object of.

While however the benefit is as above stated, it behoves the directors to use the utmost care in issuing certificates, for on the principle illustrated by *Pickard v. Sears*, 6 Ad. & E. 469, and *Freeman v. Cooke*, 2 Ex. 654, the company is estopped from denying the truth of the representation contained in the certificate as regards any person dealing with the shares in reliance thereon. Thus in the case of *In re Bahia, &c., Ry. Co.*, *ubi supra*, the company acting upon a forged transfer, issued a certificate to the transferee. A., in reliance on this certificate, purchased and paid for the shares specified in it, and they were duly transferred into his name. The forgery was subsequently discovered, and the company was, under Section 35 of the Act, ordered to restore the name of the real owner to the register. It was held in an action by A., against the com-

Responsi-
bilities in
issuing.

Forged
transfer.

Liability of
company.

pany, that he was entitled to recover as damages for the loss of the shares, the value of the shares at the time the company first refused to recognise him as a member, with interest at 4 per cent. from that time.

See also *Hart v. Frontino*, L. R. 5 Ex. 111.

The same principle would seem to apply where a certificate is issued falsely stating that a share is fully paid up. See *supra*, p. 12; *Waterhouse v. Jamieson*, L. R. 2 H. L. Sc. 29; *Spargo's Case*, 8 Ch. 407.

See also *Eaglesfield v. Marquis of Londonderry*, W. N. 1876, 270; *Cottam v. Eastern Counties Ry. Co.*, 1 J. & H. 243; and *Johnson v. Renton*, 9 Eq. 181.

The rule, however, does not apply where the person to whom the certificates are issued is a trustee for the company. In such case the company may refuse to register the transfer, *Shropshire Union, &c., Co. v. The Queen*, L. R. 7 H. L. 496.

If the company does register the transfer it cannot subsequently deny the title of the transferee, *Hart v. Frontino, &c. Co.*, L. R. 5 Ex. 111, or set up any equities between it and the transferor. *Webb v. Herne Bay Commrs.*, L. R. 5 Q. B. 642; *Brunton's Claims*, 19 Eq. 302. And if before the execution of the transfer the transferee inquires whether the company has any claim, and is answered in the negative, the transfer must be registered. See cases last cited.

Stamp.

Scrip cer-
tificate.

A certificate that a person is the holder of shares or stock in a company does not require any stamp. It is not a deed. The *Queen v. Morton*, L. R. 2. C. C. R. 22. But a scrip certificate or other document entitling any person to become the proprietor of any share of any company or proposed company, requires a 1*d.* stamp, and any person who executes, grants, issues, or delivers out any such document before the same is stamped, is liable to a penalty of 20*l.* Stamp Act, 1870, Section 101. See clauses as to certificates, *supra*, p. 147, *et seq.*

CERTIFICATES.

FORM I.

Forms.

Ordinary Certificate.

The — Company, Limited.

Incorporated under the Companies Acts, 1862 and 1867.

Capital 100,000*l.*, divided into 5000 shares of 20*l.* each.

No. —.

20*l.* shares.

THIS IS TO CERTIFY that A. B., of —, is the holder of — shares, numbered — to — inclusive, in the above named company, subject to the articles of association thereof, and that the sum of —*l.* has been paid up upon each of the said shares.

Given under the common seal of the said company, this — day of —.

The common seal of the said company was
hereunto affixed in the presence of—



} Directors.

— Secretary.

Occasionally an abstract of the clauses contained in the articles of association which regulate the right of transfer [*supra*, p. 151], and give the company a lien [*supra*, p. 159], is indorsed on the certificate.

FORM II.

Certificate of Preference Shares.

The — Company, Limited.

No. —.

Capital 100,000*l.*, divided into 5000 preference shares of 10*l.* each, and 5000 ordinary shares of 10*l.* each.

THIS IS TO CERTIFY that A. B., of —, is the holder of — of the above-mentioned preference shares, numbered, &c., in the — Company, Limited, subject to the articles of association thereof, and that upon each of the said shares the full amount of 10*l.* has been paid up.

Given, &c.

Forms.

FORM III.

Certificate of Stock.

The — Company, Limited.

Capital 100,000*l.* stock.No. —. — *l.*

THIS IS TO CERTIFY that A. B., of —, is the holder of the sum of — *l.* stock of the above-named company, subject to the articles of association thereof.

Given, &c.

FORM IV.

Another Form of Certificate of Preference Shares.

The — Company, Limited.

No. —.

Capital 50,000*l.*, divided into 4000 ordinary shares of 10*l.* each, and 1000 10 per cent. preference shares of 10*l.* each, which preference shares were created by the under-mentioned special resolution of the above-named company.

THIS IS TO CERTIFY that A. B., of, &c., is the holder of — of the said preference shares, numbered — to — inclusive, in the above-named company, subject to the articles of association thereof, and that the sum of — *l.* has been paid up upon each of the said shares.

Given, &c.

[*Resolution.*]

FORM V.

FORM OF SHARE WARRANT.

The — Company, Limited.

Capital, &c.

No. —. Share Warrant. — *l.* shares.

THIS IS TO CERTIFY that the bearer of this warrant is entitled to — fully paid up shares of — *l.*, each in the above-named company.

Given, &c.

As to share warrants, see *supra*, pp. 155, 301.

By Section 33 of the Act of 1867 : " There shall be charged on every share warrant a stamp duty equal to three times the amount of the *ad valorem* duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock."

For the *ad valorem* duty on transfers, see the Schedule to the Stamp Act, 1870, under "Conveyance or Transfer on Sale." It is as follows:—

Forms.

				£	s.	d.
Where the amount or value of the consideration for the sale						
does not exceed £5				0	0	6
Exceeds £5 and does not exceed £10				0	1	0
"	10	"	"	15	0	1 6
"	15	"	"	20	0	2 0
"	20	"	"	25	0	2 6
"	25	"	"	50	0	5 0
"	50	"	"	75	0	7 6
"	75	"	"	100	0	10 0
"	100	"	"	125	0	12 6

And so forth.

So that the proper stamp for a share warrant issued in respect of one 10% share will be 3s.

By Section 127 of the Stamp Act, 1870, it is provided that: "If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary, or other principal officer of the company, shall forfeit the sum of 50*l*."

RULES OF LONDON STOCK EXCHANGE.

A company desiring a special settling day and quotation of its shares in the official list must bear in mind the following rules of the committee of the London Stock Exchange:—

127. The committee will appoint a special settling-day for transactions in the shares of a new company, provided that no allegation of fraud be substantiated; that there has been no misrepresentation or suppression of material facts; that sufficient scrip or shares are ready for delivery; and that no impediment exists to the settlement of the account.

Special settling days.

128. The secretary of the share and loan department shall give one week's notice to the Stock Exchange of any application for a special settling-day for transactions in the shares of a new company, previously to such application being submitted to the committee, and shall require the production of the following documents, viz:—

Documents required.

The prospectus, the Act of Parliament, the articles of association, or a certificate that the company is constituted upon the cost-book system, under the Stannary laws.

The original applications for shares, the allotment-book, signed by the chairman and secretary to the company, and a certificate verified by the statutory declaration of the chairman and the secretary, stating the number of shares applied for and unconditionally allotted to the public, the amount of deposits paid thereon, and that such deposits are absolutely free from any lien.

[Until recently the preceding paragraph was as follows :—

"The original applications for shares, together with the allotment-book, signed by the chairman and secretary to the company, and a certificate signed in like manner, stating the number of shares applied for and unconditionally allotted, and the amount of deposits paid thereon." It has been altered with a view to preventing such frauds as were practised by the promoters of the Eupion Gas Company, Limited. See Report of the Select Committee on Loans to Foreign States, 1875 : Evidence of Mr. Scott, p. 19, Question 403.]

The banker's pass-book, and a certificate from the bankers, stating the amount of deposits received.

Quotations of
shares of a
new company.

129. The committee will order the quotation of a new company in the official list, provided that the company is of *bonâ fide* character, and of sufficient magnitude and importance; and that the requirements of Rule 128 have been complied with, and that the prospectus has been publicly advertised, and agrees substantially with the Act of Parliament or the articles of association, and in the case of limited companies contains the memorandum of association; that it provides for the issue of not less than one-half of the nominal capital, and for the payment of 10 per cent. upon the amount subscribed, and sets forth the arrangements for raising the capital, whether by shares fully or partly paid up, with the amounts of each respectively, and also states the amount paid or to be paid, in money or otherwise, to concessionaires, owners of property, or others on the formation of the company, or to contractors for works to be executed, and the number of shares (if any) proposed to be conditionally allotted; that two-thirds of the whole nominal capital proposed to be issued have been applied for and unconditionally allotted to the public (shares reserved or granted in lieu of money payments to concessionaires, owners of property, or others, not being considered to form part of such public allotment); that the articles of association restrain the directors from employing the funds of the company in the purchase of its own shares, and that a member of the Stock Exchange is authorised by the company to give full information as to the formation of the undertaking, and be able to furnish the committee with all particulars they may require.

In cases where fully paid shares have been granted in lieu of money payments, an official certificate will be required that the contract providing for the issue of such shares has been filed with the registrar of joint-stock companies, as prescribed by the 25th Section of "The Companies Act, 1867."

Of foreign
shares.

Foreign companies partly subscribed for all allotted in this country, shall not, unless under special circumstances, be allowed a quotation in the official list, until they have been officially quoted in the country to which they belong.

Issue of new
shares within
12 months of
special
settling.

130. A company issuing, or promising to issue, new shares within twelve months after the first settling-day appointed by the committee, unless under special circumstances, shall be liable to exclusion from the official list.

Caution to
brokers of new
companies.

131. The committee particularly caution brokers against giving the sanction of their names to the bringing out of any company without due inquiry as to the *bona fides* of its objects, the character of its promoters, directors, and concessionaires, and of the other persons connected therewith. Members disregarding this caution are liable to be dealt with in such manner as the case may require.

PROVISIONAL ORDERS OF THE BOARD OF TRADE, RULES, ETC.

—♦—

In relation to—

Gas and water works	323
Piers and harbours	351
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Tramways	368

PROVISIONAL ORDERS UNDER THE GAS AND WATER WORKS FACILITIES ACT, 1870.

INTRODUCTORY NOTES.

COMPANIES are now frequently formed to supply gas or water under the authority of a provisional order, made and confirmed pursuant to the above Act. For copy of Act see *infra*, p. 324, *et seq.*

A gas, or water, or tramway company, which, without the authority of parliament, interferes with the public streets or roads for the purpose of laying its pipes or rails, &c., is liable to be indicted for a nuisance. *Ellis v. Sheffield Gas Consumers' Co.*, 2 B. & E. 767; *Reg. v. Longton Gas Co.*, 29 L. J. M. C. 118; *Reg. v. Train*, 2 B. & S. 640; *Reg. v. United Kingdom Telegraph Co.*, 2 B. & S. 647. And its operations may in a proper case be restrained by injunction. See *Att.-Gen. v. Cambridge Gas Consumers' Co.*, 4 Ch. Ap. 71; *Att.-Gen. v. Sheffield Gas Consumers' Co.*, 17 Jur. 677; 22 L. J. Ch. 811; 3 De G. M. & G. 309.

When the only mode of obtaining parliamentary powers was to procure a special Act, companies for gas and water purposes, and especially small ones, were often prevented by the expense, from obtaining such powers, and used in many cases to do the best they could without them. But now, companies rarely commence operations without due power, either by special Act,

or by provisional order, under the following Act, duly confirmed by Parliament.

The expense of obtaining such a provisional order is very small, and the result is, that even a company with a capital of one or two thousand pounds or so, for supplying a village with gas or water, can afford to procure one. It will however be observed, that an order cannot be obtained where there is an existing company or other body supplying under an Act gas or water in the district. Sec. 3.

By the Gas and Water Works Facilities Act, 1870, 33 & 34 Vict. c. 70, it was provided as follows :—

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870."

Interpretation of terms.

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them ; that is to say,

The term "local authority" shall mean the bodies of persons named in the table in the Schedule (A.) to this Act annexed :

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same :

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road :

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority :

The term "The Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England or Ireland, the Lands Clauses Consolidation Act, 1845 ; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845 ; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860.

Description of Cases within this Act.

Act to apply to certain cases.

3. This Act shall apply where powers are required for all or any of the purposes following :—

(1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works or to manufacture and supply gas :

(2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works and to supply water :

- (3.) To raise additional capital necessary for any of the purposes aforesaid :
- (4.) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply or to amalgamate their undertakings :
- (5.) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply, and to amalgamate their undertakings :

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water ; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

Provisional Orders authorising Gas and Water Undertakings.

4. Provisional orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person ; and in the construction of this Act the term "the undertakers" shall be deemed to include any such company, companies, or person.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any provisional order can be obtained ; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any provisional order can be obtained, unless the Board of Trade in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry, that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

5. The undertakers intending to make an application for a provisional order in pursuance of this Act shall proceed as follows :—

- (1.) On or before the 1st of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers :
- (2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part I. of the Schedule (B.) to this Act ; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees or reputed lessees, and

By whom provisional orders authorising undertakings may be obtained.

Notices and deposit of documents by promoters as in Schedule.

occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream ; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited :

- (3.) On or before the 30th day of the same month of November, they shall deposit the documents described in Part II. of the same Schedule, according to the regulations therein contained :
- (4.) On or before the 23rd day of December in the same year, they shall deposit the documents described in Part III. of the same Schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act, to be deposited for the purposes of any provisional order, may be deposited with the persons and in the manner directed by the Act of the Session of Parliament held in the seventh year of the reign of His late Majesty, King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament ;" and all the provisions of that Act shall apply accordingly.

Power for Board of Trade to determine on application and on objection.

6. The Board of Trade shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application.

Power for Board of Trade to make provisional order.

7. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of Section 5 of this Act have been in all respects complied with, the Board of Trade may settle and make a provisional order accordingly.

Every such provisional order, if it relates to gasworks, shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order ; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order, within 300 yards from any dwelling-house, existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Form and contents of provisional order.

Every such provisional order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act ; but so that any such provisional order shall not contain any provision for empowering

the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands even by agreement, except to an extent therein limited.

The costs of, and connected with the preparation and making of each provisional order, shall be paid by the undertakers, and the Board of Trade may require the undertakers to give security for such costs before they proceed with the provisional order.

Costs of order.

8. When a provisional order has been made as aforesaid, and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part IV. of the Schedule (B.) to this Act.

Publication of provisional order as in Schedule.

9. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can, after the expiration of seven days from the completion of such publication, in relation to any provisional order which shall have been published as aforesaid, not later than the 25th of April in any year, procure a bill to be introduced into either House of Parliament, for an Act to confirm the provisional order, which shall be set out at length in the Schedule to the bill; but until confirmation by Act of Parliament, a provisional order under this Act shall not have any operation.

Confirmation of provisional order by Act of Parliament.

If, while any such bill is pending in either House of Parliament, a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose, as in the case of a bill for a special Act.

The Act of Parliament confirming any provisional order under this Act shall be deemed a Public General Act.

10. The provisions of The Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely,—

Incorporation of general Acts in provisional order.

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a provisional order authorises a gas undertaking, the provisions of "The Gasworks Clauses Act, 1847," shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

Where a provisional order authorises a water undertaking, the provisions of "The Waterworks Clauses Act, 1847," and of "The Waterworks Clauses Act, 1863," shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation, a provisional order under this Act shall be deemed the special Act.

11. If any undertakers, empowered by any provisional order under this Act to make works, do not, within three years from the date of such provisional order, or within any shorter period prescribed therein, complete the works; or,

Cesser of powers at expiration of prescribed time.

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the provisional order, the works are not substantially commenced; or,

If the works are commenced, but whilst the powers to carry them on

exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension ;

the powers given by the provisional order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this Section of such non-completion, non-commencement, or suspension.

Gas rents and water rates in Schedule.

12. The undertakers, empowered by any provisional order under this Act, may demand and take, in respect of gas or water supplied by them under the authority of such provisional order, rents, and rates, respectively, not exceeding the sums specified in such provisional order, subject and according to the regulations therein specified.

Company not exempt from provisions of general Act.

13. Nothing in any provisional order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act, or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the provisional order.

Queen in Council may substitute any department for Board of Trade for the purposes of this Act.

14. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for Her Majesty, at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of Her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act, by, or in connection with the Board of Trade, shall be done by, or in connection with such substituted department.

Act not to apply to Metropolis.

15. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855.

SCHEDULE A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its name.
<i>England and Wales.</i>	
Boroughs (a)	The mayor, aldermen, and burgesses, acting by the council.
Any place, other than a borough, and under the jurisdiction of commissioners, trustees, or other persons, intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons, intrusted by the Local Act with powers of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board, constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board.

Districts of Local Authorities.	Description of Local Authority of District set opposite its name.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.
<i>Scotland.</i>	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners, or trustees.	The town council.
In places within the jurisdiction of police commissioners, or trustees, exercising the functions of police commissioners, under any General or Local Act.	The police commissioners or trustees.
In any parish, or part thereof, over which the jurisdiction of a town council, or of police commissioners, or trustees, exercising the functions of police commissioners, does not extend.	The parochial board.
<i>Ireland.</i>	
The city of Dublin	The Right Honourable the Lord Mayor, aldermen, and burgesses, acting by the town council.
Towns corporate, with exception of Dublin.	The mayor, aldermen, and burgesses, acting by the town council.
Towns having commissioners, under an Act made in the ninth year of the reign of George the Fourth, intituled "An Act to make provision for the Lighting, Cleansing, and Watching of Cities and Towns corporate, and Market Towns in Ireland, in certain cases."	The commissioners.
Towns having municipal commissioners under 3 & 4 Vict. c. 108.	The municipal commissioners.
Towns having town commissioners under the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), or any Acts amending the same, or under any Local Act.	The town commissioners.
Townships having commissioners under Local Acts.	The township commissioners.

(a) "Borough" shall mean any place for the time being subject to an Act passed in the Session holden in the fifth and sixth years of the reign of King William the Fourth, c. 76, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of intended application.

(1.) Every advertisement is to contain the following particulars :—

1. The objects of the intended application.
2. A general description of the nature of the proposed new works (if any).
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works (if any) will be made.
4. The times and places at which the deposit, under Part II. of this schedule, will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the *London, Edinburgh, or Dublin Gazette*, accordingly as the district is situate in England, Scotland, or Ireland.

See Board of Trade Rules, infra, p. 333.

Rule No. 3 as to bringing objections before the Board of Trade.

Rule No. 4 as to notice on or before 1st November, to any company or corporation supplying gas in the district.

Rule No. 7 as to notices on or before 15th December, to owners, lessees, and occupiers, within 300 yards of proposed gasworks.

Rule No. 17 as to notices to mill-owners, &c., of proposed abstraction of water.

PART II.

Deposit on or before 30th November.

(1.) The undertakers are to deposit—

1. A copy of the advertisement published by them.*

[* *The Board of Trade consider that a copy of the local newspaper containing the advertisement should be deposited.*]

2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.

3. A proper plan and section of the proposed new works (if any), such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf. See Rules 5 & 16, *infra*.
- (2.) The documents aforesaid are to be deposited for public inspection—
In England or Ireland, in the office of the clerk of the peace for every county, riding, or division ; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.
- (3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III.

Deposit on or before 23rd December.

- (2.) The undertakers are to deposit at the office of the Board of Trade—
 1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
 2. A printed draft of the provisional order as proposed by the undertakers, with any schedule referred to therein.
 3. An estimate of the expense of the proposed new works (if any), signed by the persons making the same.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement ; such copies to be there furnished to all persons applying for them at the price of not more than 1s. each.
- (3.) The memorial of the undertakers (to be written on foolscap paper bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :—

[Short title of undertaking.]

To the Board of Trade,

The memorial of the undertakers of *[short title of undertaking]* :

Showeth as follows :—

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement :—

[Here advertisement to be set out verbatim.]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement, and *[Here state deposit of the several matters required by Act]*.

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B. }
C. D. } Undertakers.

PART IV.

Deposit and advertisement of provisional order when made.

(1.) The undertakers are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of * each.

[* *The Board of Trade consider that the price to be inserted here should not be more than 1s.*]

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

The above Act was amended by the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, 36 & 37 Vict. c. 89. This enactment enables the Board of Trade to make provisional orders, amending special Acts of gas and water companies, and provisional orders made and confirmed under the Act of 1870. The procedure is similar to that under the Act of 1870. By Section 13, the Board of Trade are empowered, if they think fit, to order a public inquiry to be held in relation to any application for a provisional order under the Act of 1870. Section 14 is as follows :—

Power for
Board of
Trade to
make rules.

“The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, Rules with respect to the following matters :—

“The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act ; and

“As to any other matter or thing in respect of which it may be expedient to make Rules for the purpose of carrying the said Act, or this Act, into execution.

“Any Rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act, or this Act, and shall be of the same force as if enacted in the said Act, or this Act, and shall be judicially noticed.

“Any Rules made in pursuance of this Section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the next session of Parliament.”

As to the enactments incorporated with provisional orders [see s. 10, *supra*, p. 327]:—

The Gas Works Clauses Act, 1847, contains ample power for undertakers, authorised to construct gas works, to open and break up streets, &c., and various other necessary and convenient powers and privileges, and the undertakers are thereby subjected to divers conditions for the public benefit. This Act has been amended by the Gas Works Clauses Act, 1871 (34 & 35 Vict. c. 41), which applies (*inter alia*) to all gas undertakings authorised by provisional order under the Gas and Water Works Act, 1870, save where the provisions are expressly varied by the order, s. 3. It contains further important enactments in connection with gas undertakings. It is to be construed as one with the above Act of 1847. S. 1. See *Commercial Gas Co. v. Scott*, L. R. 10 Q. B. 400.

The Waterworks Clauses Act, 1847 (10 Vict., c. 17), contains all necessary powers for a water company. It was amended by the Waterworks Clauses Act, 1863, 26 & 27 Vict. c. 93.

The following Rules have been made by the Board of Trade.

BOARD OF TRADE RULES.

The Board of Trade, under the powers conferred upon them by section 14 of the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, have made the following rules with respect to applications for the grant of provisional orders under the Gas and Water Works Facilities Act, 1870:—

GAS.

ADVERTISEMENT.

1. Promoters desiring incorporation must register themselves under the Companies Act, 1862.

[See further as to gas and water companies, *supra*, pp. 109, 131. The Articles, *supra*, p. 142, *et seq.*, can readily be adapted].

2. The publication of the advertisements in October and November as required by Section 5 (2) of the Gas and Water Works Facilities Act, 1870, is to be made in manner prescribed by Part I. of Schedule B. to the said Act.

3. The advertisement must state that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary of the Railway Department of the Board of Trade on or before the 15th January next ensuing, and that copies of their objections must at the same time be sent to the promoters.

4. The notice in writing on or before the 1st November to any com-

PROVISIONAL ORDERS OF THE BOARD OF TRADE, ETC.

pany, corporation, or person supplying gas within the district to which the proposed application refers, which is required by Section 5 (1) of the Act, must state that every such company, corporation, or person desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary of the Railway Department of the Board of Trade, on or before the 15th of January next ensuing, and that copies of their objections must at the same time be sent to the promoters.

Deposit of Documents on or before the 30th November.

The deposit of documents required by Section 5 (3) of the Act, is to be made as required in Part II. of Schedule B.

5. The maps to be deposited on or before the 30th November under Part II. of Schedule B. with respect to gasworks must be on a scale of not less than an inch to the mile, and the plan of the proposed works shall be on a scale of not less than one inch to the 100 feet, and as far as may be in accordance with a model plan which may be obtained on application to the Railway Department of the Board of Trade. In cases where any of the works shall be situate on tidal lands within the ordinary spring tides, all tidal waters shall be coloured blue on the map and plan.

Deposit of Documents on or before the 23rd December.

The deposit of documents required by Section 5 (4) of the Act is to be made as required by Part III. of Schedule B.

CONSTRUCTION OF WORKS.

6. When the application includes a power to construct any gasworks or works connected therewith, a list of the local and road authorities in whose districts the proposed works are situated, must accompany the application on or before the 23rd December, and evidence of the consent of the authorities, required by the 4th section of the Act, must be given before the application can be entertained.

Such evidence should be given by furnishing a certified copy of the resolution passed at the meeting of the local authority, at which the application was approved, together with a copy of the notice convening the meeting, which notice must contain a statement that the subject of the proposed provisional order will be brought before the meeting. When the consent of the road authority is also required, similar evidence in respect of the road authority must be furnished.

7. When the application includes a power to construct works for the manufacture of gas, the promoters must comply with the requirements of the following standing order of the House of Commons (No. 15) for Session 1877—

“On or before the 15th day of December immediately preceding the application for a bill . . . for constructing gasworks . . . or works for the manufacture or conversion of the residual products, notice shall be served upon the owner, lessee, and occupier of every dwelling-house within 300 yards of the limits within which . . . such works may be constructed.”

Similar notice must be given when works are proposed to be constructed for the storage of gas.

The notices referred to in this rule must state that all persons desirous of making any representations to the Board of Trade, or of bringing before them any objections respecting the application, may do so by letter addressed to the Assistant Secretary of the Railway Department of the Board of Trade on or before the 15th January next ensuing, and that copies of their objections must at the same time be sent to the promoters.

8. A copy of the notice which was served on or before 1st November next before the application, on every company, corporation, or person supplying gas within the district, which is required by Section 5 (1) of the Act, must accompany the application on or before the 23rd December.

9. A copy of the notice which was served on or before the 15th December on every owner, lessee, or occupier within 300 yards of any proposed works which is required by Rule No. 7 must accompany the application on or before the 23rd December.

10. In addition to the plans to be deposited under Schedule B. (Part II.) on or before the 30th November, a plan showing the site of the existing gasworks and of any proposed enlargement thereof, must accompany every application made on or before the 23rd December, other than applications for additional capital.

ADDITIONAL CAPITAL.

11. In the case of a company making application for additional capital, a certified copy of the resolution of three-fourths of the shareholders present and voting at a special general meeting approving of the application, together with a copy of the notice convening the meeting, must be furnished before the application can be entertained.

12. When an application is made for additional capital, a statement of the existing capital of the company, showing the amount authorised, raised, and expended, together with a statement in detail under separate heads, of all the purposes for which the new capital is required, must accompany the application on or before the 23rd December.

AGREEMENTS AND AMALGAMATIONS.

13. When an application includes power for two or more companies supplying gas in any district to enter into agreements jointly to furnish gas, and to amalgamate their undertakings, certified copies of the resolutions passed by three-fourths of the shareholders of each company present and voting at a special general meeting called for the purpose of considering the application, with a copy of the notice convening the meeting, must be furnished before the application can be entertained.

PURCHASE OF LAND.

14. Where the promoters propose to take any lands for the purposes of gasworks or waterworks, the contracts for the purchase of all the lands required must be produced at the time when the proofs of compliance with the provisions of the Act concerning deposit and publication are produced.

WATERWORKS.

15. The above regulations, with the exception of Nos. 4, 5, 7, 8, 9, and 10 will apply, *mutatis mutandis*, to applications for provisional orders to authorise any water undertaking.

16. The plans and sections to be deposited on or before the 30th November under Part II. of Schedule B. with respect to waterworks shall be such plans and sections as would be required by the standing orders for the time being of the House of Commons, if the promoters instead of applying for a provisional order were proceeding by private bill.

17. The notice in writing in October or November to all owners, reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories for a distance of twenty miles below the point in which water is proposed to be abstracted from any stream, which is required by Section 5 (2) of the Act, must state that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary of the Railway Department of the Board of Trade, on or before the 15th of January next ensuing, and that copies of their objections must at the same time be sent to the promoters.

18. A copy of the notice of the proposed abstraction of water which was served in October or November, as mentioned in Rule No. 17, must accompany the application on or before the 23rd December.

GAS AND WATER WORKS.

GENERAL INSTRUCTIONS.

19. The draft provisional order to be deposited at the Board of Trade on or before the 23rd December must be in triplicate, and must be printed on one side of the page of paper, so as to leave the back of the page blank, and any Schedule annexed must begin a new page. The names of the promoters, or of their agents, must be printed on the outside of every draft provisional order, and there should be a notice at the end of it stating that objections are to be sent in manner provided by Rule No. 3.

20. All memorials, objections, and other documents sent to or deposited with the Board of Trade must be on common foolscap paper.

21. The promoters will be required to pay a fee of 35*s*. towards the expense of settling the provisional order; this sum must be paid to the officer of the Board of Trade with whom the draft provisional order is deposited, and at the time of the deposit.

22. Where the promoters are a company incorporated under the Companies Act, 1862, a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company, must accompany the application; and in the case of a company incorporated in any other manner, a copy of every deed or instrument of settlement or incorporation, or Act of Parliament relating to the company, must also accompany the application.

23. In forwarding to the Board of Trade objections to any application before the 15th January, as provided by Rules 3 and 4, the objectors or

their agents are to state that their objections have been forwarded to the promoters also.

24. The promoters must be prepared to prove compliance with the provisions of the Act concerning deposit and publication by the 10th January. Six days' notice will be given of the day and hour at which the promoters are to attend for the purpose at the Board of Trade. Printed forms of proof will be supplied on application to the Railway Department of the Board of Trade; these should be filled up by the promoters, and brought with the requisite documents to that department at the time fixed for the proof.

25. The bill for confirming provisional orders will be brought in as early in the session as possible. All preliminary questions must, however, be determined before the 1st of March.

DEPOSIT AND ADVERTISEMENT OF PROVISIONAL ORDER WHEN MADE AS REQUIRED BY SECTION 8.

26. When a provisional order has been made, and before it is introduced into the confirmation bill, the promoters will be required to submit to the Board of Trade the receipt of the clerk of the peace or sheriff clerk, or to prove by affidavit the deposit of the order with such officer as required by part IV. of Schedule B. to the Act. They must also produce a copy of the local newspaper containing the advertisement* of the order. This advertisement must state the office where printed copies of the order can be obtained; the office must be the office named in the original advertisement of the application. Proof must also be given that the advertised order is a correct copy of the order delivered by the Board of Trade to be advertised; that it was inserted in the newspapers in which the original advertisement of the application was published, and that a sufficient number of printed copies of the order have been deposited for sale at the office named in the original advertisement and the price for which they may be obtained.

* Section 9 of the Act requires that this advertisement should be published not later than the 25th April.

Copies of the order as settled by the Board of Trade can be obtained by the promoters from the Queen's printers, at the expense of the promoters, by an order to be obtained in the Railway Department of the Board of Trade.

PROLONGATION OF TIME FOR COMMENCEMENT OR COMPLETION OF GAS AND WATER WORKS.

The Board of Trade, under the powers conferred upon them by Section 11 of the Gas and Water Works Facilities Act, 1870, have made the following rules with respect to applications for a prolongation of time for the commencement or the completion of the works authorised by any order made under the above-named Act :—

1. The application should be in the form of a memorial setting forth the grounds on which the application is made, and must be made at least one month before the expiration of the time prescribed for the commencement or the completion of the works, as the case may be.

2. The undertakers of any gas or water undertaking authorised by any order, who intend to apply to the Board of Trade for a prolongation of the time limited for the commencement or the completion of the works authorised by such order, shall publish by advertisement, once at least in two successive weeks, in some one and the same newspaper circulating in the district affected by such order, a notice of their intention to apply to the Board of Trade for a prolongation of time.
3. The notice must state the period to which it is proposed to prolong the time limited for the commencement or the completion of the works, as the case may be, and must contain a notification that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary of the Railway Department of the Board of Trade, on or before a day to be named in the advertisement, being not less than twenty-one days from the date of the first publication of the advertisement, and that copies of their representations or objections are at the same time to be sent to the undertakers.
4. A copy of this notice must be delivered to every local and road authority, and to every company, corporation, or person supplying gas or water, as the case may be, within the district affected by the order, and in the case of water which is authorised by an order to be abstracted from a stream, to the owners, lessees, and occupiers of mills, manufactories, and other works using the water of such stream, [to whom] notice was required to be given of the application for such order before the second publication of the notice. Copies of newspapers containing the notice, and a statement that a copy of it has been duly served on all the parties above mentioned, as required by these rules, must be sent to the Board of Trade with the application.
5. Before the Board of Trade comply with the application they will impose such conditions (if any) as they think fit.

HENRY G. CALCRAFT.

Board of Trade,
(Railway Department).

The promoters must also comply with the following standing orders of Parliament :

STANDING ORDER OF HOUSE OF COMMONS, No. 39, FOR
SESSION 1877.

"Whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a provisional order or provisional certificate, duplicates of the said documents shall, at the same time, be deposited in the Private Bill Office, provided that, with regard to such deposits as are so made at any public department after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November."

STANDING ORDER OF THE HOUSE OF LORDS, No. 39, FOR
SESSION 1877.

"8. Whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a provisional order or certificate, duplicates of the said documents shall be at the same time deposited in the office of the clerk of the parliaments, provided that, with regard to such deposits as are so made at any public department after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November."

See Rule No. 5, *supra*, as to form of maps and plans for gasworks, and Rule No. 16, *supra*, for plans and sections for waterworks.

The following provisional orders contain the usual clauses.

BARCHESTER GAS.

Order empowering The Barchester Gaslight and Coke Company, Limited, to construct and maintain gasworks, and to make and supply gas at Barchester, in the parish of Barchester, in the county of D——.

1. This order may be cited as "The Barchester Gas Order, Short title.
18—."

2. The provisions of "The Lands Clauses Acts" (except with Incorporation
of Acts. respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry on lands by the promoters), of The Gas Works Clauses Act, 1847, and of The Gas Works Clauses Act, 1871, are hereby incorporated with this order, except where the same are expressly varied by this order.

The above clause is usually inserted, but it is not necessary. See Section 10 of the Act of 1870, *supra*, pp. 327, 333.

3. The several words and expressions to which, by the Acts Interpreta-
tion. in whole or in part incorporated with this order, and by The Gas and Water Works Facilities Act, 1870, meanings are assigned, have in this order the same respective meanings.

4. The limits within which the provisions of this order shall Limits of
order. be in force and have effect (in this order referred to as "the limits of supply"), shall be the parish of Barchester, in the county of D——.

UNDERTAKERS.

5. The A. Gaslight and Coke Company, Limited, shall be
z 2

the undertakers for the purposes of this order, and are in this order referred to as "the undertakers."

CAPITAL.

Capital.

6. The share capital of the undertakers, for the purposes of their gas undertaking, shall not exceed 15,000*l.*, unless they be hereafter authorised to raise additional share capital by provisional order under The Gas and Water Works Facilities Act, 1870, or by Act of Parliament.

ACQUISITION OF LANDS, &c.

Power to purchase land.

7. The undertakers may by agreement purchase or take on lease, and use such of the lands shown on the map deposited for the purpose of this order, in this order referred to as "the deposited map," and described in the schedule to this order annexed, as may be required for the undertaking authorised by this order.

Additional land.

8. The undertakers may from time to time purchase by agreement, and, subject to the provisions of section 5 of The Gasworks Clauses Act, 1871, may hold for any of the purposes of this order any land not exceeding five acres, in addition to the lands shown on the deposited map, and described in the schedule to this order annexed.

CONSTRUCTION AND MAINTENANCE OF GASWORKS, MANUFACTURE AND SALE OF GAS, COKE, AND RESIDUAL PRODUCTS.

Undertakers may erect and maintain gas-works on lands described in schedule, and may make and sell gas, &c.

9. The undertakers on any of the lands shown on the deposited map, and described in the schedule to this order annexed, when the same have been purchased by or leased to them, may erect and maintain, and from time to time alter and enlarge, retorts, gas-holders, receivers, purifiers, meters, apparatus, and works for the manufacture and storing of gas, and of coke and other residual products obtained in the manufacture of gas and matters producible therefrom; and they may, subject to the provisions of this order, make gas and supply and sell the same within the limits of supply, and may manufacture coke, coal-tar, pitch, asphaltum, and ammoniacal liquor

oil, and all other residual products obtained in the manufacture of gas, and matters producible therefrom, and may sell and dispose of the same at the works and elsewhere.

The orders issued by the Board do not appear to comply with paragraph 2 of Section 7 of the Act of 1870, *supra*, p. 326. Section 5 of the Gasworks Clauses Act, 1871, does not repeal that paragraph.

10. If any difference arise between the undertakers and any railway, canal, or other company whose land or works the undertakers have power, under the authority of this order, to cross for the purpose of meeting the demands for gas within the limits of supply, as to the mode of laying down, repairing, altering, or enlarging pipes, or as to the facilities to be afforded for the same, the difference shall be settled by an engineer to be appointed by the Board of Trade at the request of either party.

Differences with railway and other companies.

QUALITY OF GAS.

11. The quality of gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce a light equal in intensity to the light produced by fourteen sperm candles, and shall in all respects be in accordance with the provisions of The Gasworks Clauses Act, 1871.

Quality of gas.

Price of Gas.

12. The price to be charged by the undertakers for gas supplied by them to consumers shall not exceed 7s. 6d. per one thousand cubic feet.

Price of gas.

Pressure of Gas.

13. All gas supplied by the undertakers to any consumer of gas shall be supplied at such pressure as to balance from midnight to sunset a column of water not less than six-tenths of an inch in height, and to balance from sunset to midnight a column of water not less than eight-tenths of an inch in height, at the main, as near as may be to the junction therewith of the service pipe supplying such consumer.

Pressure of gas.

Testing Gas.

14. The undertakers, before supplying gas under the authority of this order, shall cause to be provided at their works a testing place with apparatus therein, according to the provisions of

Testing of gas.

The Gasworks Clauses Act, 1871 ; and the burner to be used for testing the gas shall be a Sugg's London Argand No. 1, with a 6-inch by 1 $\frac{3}{4}$ -inch glass chimney, and if at any time the gas flame tails over the top of the glass, a 6-inch by 2-inch chimney shall be used ; and any gas examiner appointed under The Gasworks Clauses Act, 1871, for the purposes of this order, may from time to time, subject to the terms of his appointment, at such testing place or elsewhere, as and when he thinks fit, test the pressure at which the gas is supplied, and for that purpose may open any street, road, passage, or place vested in or under the control of any local or road authority.

Miscellaneous.

No penalty
in case of un-
avoidable
cause.

15. No penalty shall be incurred by the undertakers for insufficiency of pressure, defect of illuminating power, or for excess of impurity in the gas supplied by them in any case in respect of which it is proved that such insufficiency, defect, or excess was caused by an unavoidable cause or accident.

Undertakers
to pay interest
on deposit.

16. Where any money is deposited by any person by way of security with the undertakers for the payment to them of all moneys which may become due to them by such person in respect of any supply of gas or of the purchase or hire of any meter, the undertakers shall pay interest at the rate of five pounds per centum per annum on every sum of ten shillings deposited by way of such security for every six months during which the same remains in their hands.

Incorporation
of section 140
of "The Com-
panies Clauses
Consolidation
Act, 1845."

17. Section 140 of The Companies Clauses Consolidation Act, 1845, shall be and is hereby incorporated with this order ; provided that for the purposes of such incorporation the expression "the company" in the said section shall be construed to mean the undertakers.

The above clause is usually inserted, but it seems of little value. The incorporated section merely enables the secretary or treasurer of the company to represent it in proceedings against the estate of a bankrupt or insolvent debtor. But by Subsection 7 of Section 80 of the Bankruptcy Act, 1869, "a corporation may prove a debt, vote, and otherwise act in bankruptcy, by an agent duly authorised under the seal of the corporation." This enactment is ample and convenient.

Costs of order.

18. All the costs, charges, and expenses of and incidental to the applying for, preparing, obtaining, and confirming this order, or otherwise in relation thereto, shall be paid by the undertakers.

SCHEDULE.

GAS LANDS.

Certain lands at Barchester, in the parish of Barchester, in the county of D——, bounded, &c.

CAMBERLEY WATER.

ORDER EMPOWERING THE CAMBERLEY WATER COMPANY, LIMITED, TO CONSTRUCT WATERWORKS AND TO SUPPLY WATER IN THE PARISH OF N., IN THE COUNTY OF X.

1. This order may be cited as “The Camberley Water Order, 1876.” Short title.

2. The provisions of The Lands Clauses Acts (except with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry on lands by the promoters of the undertaking), and The Waterworks Clauses Acts, 1847 and 1863, are hereby incorporated with this order, except where the same are expressly varied by this order. Incorporation of Acts.

See note to Clause 2 of above order.

3. The several words and expressions to which by the Acts in whole or in part incorporated with this order, and by The Gas and Water Works Facilities Act, 1870, meanings are assigned, have in this order the same respective meanings: Interpretation.

Provided always, that the expression “superior court” or “court of competent jurisdiction” in any Act wholly or partially incorporated with this order shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt, and not a debt or demand created by statute:

The term “premises” in this order shall mean and include any house, building, or land in, to, or through which water is supplied under the authority of this order.

4. The limits within which the provisions of this order shall be in force and have effect (in this order referred to as “the limits of supply”) shall be the parish of N——, in the county of X. Limits of order.

UNDERTAKERS.

5. The Camberley Water Company, Limited, shall be the Undertakers.

undertakers for the purposes of this order, and are in this order referred to as "the undertakers."

Capital.

6. The share capital of the undertakers shall not exceed 4,000*l.*, unless the undertakers shall be authorised to raise additional share capital by provisional order under The Gas and Water Works Facilities Act, 1870, or by Act of Parliament.

Undertakers may purchase lands by agreement.

7. The undertakers may, by agreement, purchase and use such of the lands delineated on the plans deposited for the purposes of this order as may be required for the undertaking authorised by this order.

Undertakers may acquire easements, &c., by agreement.

8. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may, if they think fit, subject to the provisions of the said Acts, grant to the undertakers any easement, right, or privilege, not being an easement of water, in, over, or affecting any such lands; and the provisions of the said Acts with respect to lands and rentcharges, so far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easements, rights, or privileges as aforesaid.

Undertakers to hold limited quantity of land only.

9. The undertakers shall not hold more than three acres of land.

CONSTRUCTION OF WATERWORKS.

Power to construct water-works and supply water.

10. The undertakers may, on lands acquired by them under the authority of this order, make and maintain, in the line and according to the levels shown on the plans and sections deposited for the purposes of this order (in this order referred to as the "deposited plans and sections"), the works hereinafter described, with all needful pipes, culverts, cuts, drains, sluices, engines, pumps, filtering-beds, weirs, meters, and other works connected therewith, and they may, subject to the provisions of this order, supply and sell water within the limits of supply.

The works authorised by this order are as follows:

- (a.) A well or shaft and boring, and a tank and pumping station with engines, and other works, to be wholly situated in a field in the said parish of N., belonging to L. D., at or near the westerly side of such field, and about seventy yards north of the highway leading from P. to N., and which field is bounded, &c.
- (b.) A service and storage reservoir, about forty yards long and thirty yards wide, and a water tower and tank, all

in the above-mentioned field, and at or near the north-west corner thereof, and about 150 yards north of the said highway :

- (c.) A conduit or line of pipes wholly situate in the said field, commencing from and out of the said proposed well or pumping station, passing thence in a northerly direction to, and terminating on the south side of, the proposed reservoir :
- (d.) A conduit or line of pipes wholly situate in the said parish of N., commencing at the said intended reservoir (south side), passing thence in a southerly direction under or along the said field to the said highway, and thence in an easterly direction under or along such highway, to and terminating at or near the north side of such highway, near the point where — lane joins such highway.

11. In constructing the works authorised by this order the undertakers may deviate laterally to any extent within the limits of lateral deviation shown on the deposited plans, and the undertakers may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three feet upwards or seven feet downwards.

Limits of deviation.

12. The works authorised by this order shall be commenced, constructed, and completed within the time and subject to the conditions prescribed by section 11 of The Gas and Water Works Facilities Act, 1870 : Provided always, that, subject to the restrictions and provisions of this order, the undertakers may from time to time alter, enlarge, and extend their engines, machinery, tanks, wells, pipes, reservoirs, and other works, in such way and manner, as may be requisite or advisable for supplying water within the limits of supply.

Period for completion of works.

See Section 11 of the Act of 1870, *supra*, p. 327.

13. If any difference arises between the undertakers and any railway, canal, or other company whose land or works the undertakers have power to cross under the authority of this order, for the purpose of meeting the demands for water within the limits of supply, as to the mode of laying down, repairing, altering, or enlarging their conduits or pipes, or the facilities to be afforded for the same, the same shall be settled by an engineer to be appointed by the Board of Trade at the request of either party.

As to pipes crossing the works of a railway or other company.

QUALITY OF WATER.

Quality of
water.

14. The water supplied by the undertakers shall be as pure as, having regard to the source and nature of supply, circumstances will admit; and the same shall be effectually filtered, if at any time the Board of Trade shall, on the representation of the local board, or any twenty consumers of water supplied by the undertakers, that such filtration is necessary, so order.

SUPPLY.

Limits of
pressure.

15. The water supplied by the undertakers need not at any time be delivered at a greater height than can be reached by gravitation from the service tanks or works authorised by this order.

Rates for
supply for
domestic
purposes.

16. The undertakers shall, at the request of the owner or occupier of any dwelling-house, or part of a dwelling-house, entitled under the provisions of this order to demand a supply of water for domestic purposes (which shall include one water-closet), furnish to such owner or occupier a sufficient supply of water for such domestic purposes, at rates not exceeding the rates hereinafter specified; (that is to say,)

Where the annual rackrent or value of the premises so supplied with water does not exceed 5*l.* per annum, at a rate not exceeding twopence per week:

Where such rent or value is above 5*l.* and does not exceed 20*l.* per annum, at a rate per cent. per annum not exceeding 7*l.*

Where such rent or value is above 20*l.*, at a rate per cent. per annum not exceeding 6*l.*

Rates for
waterclosets
and baths.

17. The undertakers may charge in respect of every water-closet beyond the first in any premises within the limits of supply an additional sum not exceeding 5*s.* per annum, and for every bath an additional sum not exceeding 10*s.* per annum, and such additional sums may be received with, and as part of, or recovered by the same means as, the rate for the supply of water for domestic purposes: Provided always, that for baths containing as usually filled for use a greater quantity of water than fifty gallons the undertakers may charge an increased rate in proportion to the size of such baths.

Power for
undertakers

18. Subject to the provisions of this order, the undertakers

may from time to time make and enforce such reasonable regulations as they may find expedient for preventing the waste or misuse of water, and, among other things, may prescribe the pipes, cocks, cisterns, and other apparatus proper and suitable for the purposes of supply.

to make regulations for preventing waste of water.

19. In the event of any such regulations not being observed by any person having or requiring a supply of water, the undertakers may refuse to supply water, or may cut off the water supplied to him, unless and until the regulations be complied with ; and if, and whenever any difference shall arise as to whether the regulations are reasonable, or have been complied with, the difference may be referred by either party to and shall be settled by two justices.

Power for undertakers to refuse supply where regulations not complied with.

20. The undertakers may from time to time supply any person, corporation, or company with water for other than domestic purposes for such remuneration and upon such terms and conditions as shall be agreed upon between the undertakers and such person, corporation, or company ; but, notwithstanding any such agreement, no person, corporation, or company shall be entitled to such a supply whenever and as long as the undertakers are of opinion that the same would interfere with the proper supply of water for domestic purposes under this order ; and every such agreement shall be, by virtue of this order, determinable by the undertakers on one month's notice in writing.

Water supplied by agreement.

21. The undertakers may, if they think fit, enter into agreements for the supply of water by measure to any consumer, and may charge a rent for each meter provided by them at a rate per annum not exceeding fifteen per cent. of the price of the meter, such rent to be paid quarterly in advance, and to be recoverable in all respects with and as the water rate.

Supply of water by meter.

22. The undertakers shall at all times, at their own expense, keep all meters or other instruments for measuring water let by them for hire to any consumer in proper order for correctly registering the supply of water ; and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall for the purposes aforesaid have access to and be at liberty to remove, test, inspect, and replace any such meter or other instrument at all reasonable times.

Undertakers to keep meters in repair.

Register of
meters to be
evidence.

23. Where water is supplied by measure the register of the meter or other instrument for measuring water shall be *prima facie* evidence of the quantity of water consumed and in respect of which any water rent is charged and sought to be recovered by the undertakers : Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference shall be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of such justices shall be final and binding on all parties.

Amendment of
10 & 11 Vict.
c. 17, s. 44.

24. Section 44 of The Waterworks Clauses Act, 1847, shall, for the purposes of this order, have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom : Provided always, that any rent paid by an occupier in pursuance of the provisions of the said section may be deducted by such occupier from any rent from time to time due by him to such owner.

When several
houses sup-
plied by one
pipe, each
to pay.

25. When several houses or parts of houses in the occupation of several persons shall be supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of several houses or parts of houses had been separately supplied with water from the works of the undertakers by a distinct pipe : Provided always, that the undertakers shall not be compelled to supply water to the occupier of any part of a dwelling-house unless the water rate is paid for the whole of such building, house, and premises.

Supply of
water to
tenements
in a row.

26. Where there are several tenements in a row no tenant or occupier of any one of the tenements, nor any person on his behalf, shall take or use the water laid on by the undertakers to any other such tenement, unless the tenant or occupier be, in respect of the tenement so occupied by him, rated under this order for a supply of water.

PENALTIES.

Impurity of
water.

27. If on any day the water supplied by the undertakers is of less purity than it ought to be according to the provisions

of this order, the undertakers shall in every such case be liable to a penalty not exceeding 10*l.*; Provided that no penalty shall be incurred in any case in which it is proved that the defect in purity was occasioned by an unavoidable cause or accident.

28. Every person who wilfully, fraudulently, or by culpable negligence injures or suffers to be injured any meter or fittings belonging to the undertakers, or who fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts, consumes, or uses water of the undertakers, shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding 5*l.*, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipe, meter, or fittings belonging to the undertakers, or has fraudulently altered the index to any meter, or prevented any meter from duly registering the quantity of water supplied, the undertakers may also, until the matter complained of has been remedied, but no longer, discontinue the supply of water to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such injury, alteration, or prevention, or for abstracting, consuming, or using water of the undertakers, when such pipe, meter, or fittings is or are under the custody or control of the consumer, shall be *prima facie* evidence that such injury, alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter.

Injuring
meters.

29. Any tenant or occupier of one or part of one of several houses or tenements supplied by a common pipe who takes or uses the water laid on by the undertakers to any other such house or tenement, or allows the same to be used contrary to the provisions of this order, shall for every such offence be liable to a penalty not exceeding five pounds.

Misuser where
supply to
several houses
is by a pipe
common to all.

MISCELLANEOUS.

Incoming
tenant not
liable to pay
arrears.

30. In case any consumer of water supplied by the undertakers leave the premises where such water has been supplied to him without paying to them the water rate or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears.

Several names
in one sum-
mons.

31. Any summons or warrant issued for any of the purposes of this order may contain, in the body thereof or in the schedule thereto, several names and several sums.

Warrant of
distress to
include costs.

32. Any justice who issues a warrant of distress in pursuance of the provisions of this order may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money.

Liability to
water rate
not to dis-
qualify jus-
tices from
acting.

33. No justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of this order by reason of his being liable to the payment of any water rate or other charge under this order.

Incorporation
of section 140
of "The Com-
panies Clauses
Act, 1845."

34. Section 140 of The Companies Clauses Consolidation Act, 1845, shall be and is hereby incorporated with this order: Provided that, for the purposes of such incorporation, the expression "the company" in the said section shall mean the undertakers.

See *supra*, p. 342, note to Clause 17.

Costs of order.

35. All the costs, charges, and expenses of and incidental to the applying for, preparing, obtaining, and confirming this order, and otherwise in relation thereto, shall be paid by the undertakers.

PROVISIONAL ORDERS UNDER THE GENERAL PIER AND HARBOUR ACT, 1861.

INTRODUCTORY NOTES.

A considerable number of companies have been formed to erect piers. The necessary powers are readily obtained from the Board of Trade at a trifling expense. The Board can authorise the construction of any pier, harbour, quay, wharf, jetty, or excavation, on or near the shore of the sea, or of any creek, bay, or arm of the sea, or navigable river communicating therewith, in the United Kingdom, provided that the estimated expenditure does not exceed 100,000*l*.

By 46 Geo. III. c. 153, s. 1, it is provided as follows:—

“From and after the passing of this Act, it shall not be lawful for any person or persons to make, construct, or erect any pier, quay, wharf, jetty, breast, or embankment in or adjoining to any public harbour in the United Kingdom, or any river immediately communicating therewith, so far as the tide flows up the same, without giving at least one month's previous notice of his, her, or their intention so to do to the Secretary of the Admiralty, who is to lay the same before the Lord High Admiral or lords commissioners of the Admiralty for the time being.”

The penalty for an offence against this provision is 200*l*.

This enactment has been modified by 25 & 26 Vict. c. 69, s. 15, which provides that:—

“From and after the 31st day of December, 1862, the Act, of the 46th year of King George III. (Chap. 153), ‘For the Preservation of the Public Harbours of the United Kingdom,’ shall be read as if the Board of Trade were therein named instead of the Admiralty.”

All notices therefore which were formerly deposited at the Admiralty under 46 Geo. III. c. 153, must now be deposited at the Board of Trade.

By Section 7 of the Crown Lands Act, 1866, 29 & 30 Vict.

c. 62, it is provided that :—" From and immediately after the 31st day of December, 1866, all such parts and rights and interest as then belong to Her Majesty in right of the Crown of and in the shore and bed of the sea, and of every channel, creek, bay, estuary, and of every navigable river of the United Kingdom, as far up the same as the tide flows (and which are hereinafter for brevity called the foreshore), except as in this Act provided, shall, subject to the provisions of this Act, and subject also to such public and other rights as by law exist in, over, or affecting the foreshore or any part thereof, be and the same are hereby transferred from the management of the Commissioners of Woods to, and thenceforth the same shall be under, the management of the Board of Trade."

Section 8 of the same Act provides as follows :—

" 8. The Board of Trade shall have and may exercise all the powers and authorities, rights, and privileges, whatsoever, with regard to the foreshore which the Commissioners of Woods now have or are entitled to exercise with respect to the same."

The management of the rights and interests of the Crown of and in the foreshore and bed of the sea is, thus, with certain exceptions, transferred to the Board of Trade.

All persons proposing to erect works on the foreshore, *i.e.*, the land between high and low water mark of ordinary medium tides, or in the bed of the sea, or to remove stones, sand, or shingle from the same, should apply to the Board of Trade, with the view of making arrangements as respects the rights and interests of the Crown in the foreshore or bed of the sea which will be used or interfered with.

In the case of any proposed works such application may be made simultaneously with that for the assent of the Board of Trade in the interests of navigation.

It is to be understood that the Board of Trade have every desire to remove obstacles in the way of public improvements and to assist any useful works. They are also anxious not to interfere with any private rights. They are bound, however, in all their proceedings to see that no injury is caused to navigation by works on the foreshore, that there is no interference with undoubted public rights, and that the title which the Crown *primâ facie* has in the foreshore and bed of the sea is not injured.

The power of the Board of Trade to make provisional order

authorising the construction of piers, &c., is derived from The General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), and The General Pier and Harbour Act, 1861, Amendment Act (25 Vict. c. 19).

By the last mentioned Act it is provided as follows :—

Any persons intending to make application to the Board of Trade for a provisional order relative to a pier or harbour, which persons are hereinafter called the promoters, shall in the months of October and November, or either of them, immediately preceding the application for the provisional order, publish notice of their intention by advertisement, according to the regulations contained in Schedule (B.) Part I. to this Act. Section 3.

Section 4. On or before the 30th day of November immediately preceding the application for the provisional order, the promoters shall deposit the documents described in Schedule (B.) Part II. to this Act according to the regulations therein contained.

Section 5. On or before the 23rd day of December in the same year the promoters shall deposit the documents mentioned in Schedule (B.) Part III. to this Act, according to the regulations therein contained.

Schedule (B.) to 25 Vict. c. 19, referred to in the above sections, is as follows :—

PART I.—Advertisement in October or November of Intended Application.

(1.) Every advertisement is to state—

1. The objects of the intended application, specifying any of the following objects, when comprised among the objects of the application :
 - (a.) Extension of time for the completion of any works already authorised :
 - (b.) Power for a company to amalgamate with another :
 - (c.) Power to sell, purchase, lease, or take on lease an undertaking :
 - (d.) Amendment or repeal of any local or special Act of Parliament, or of any former provisional order :
 - (e.) Power to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties :
 - (f.) The conferring, varying, or extinguishing of any exemption from tolls, rates, or duties, or of any other right or privilege :
 - (g.) Constitution or alteration of constitution of any harbour authority.
2. A general description of the nature of the proposed new works, if any.
3. The names of the parishes, townlands, townships, and extra-parochial places in which the proposed new works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London, or at the place to which the intended

application relates, at which printed copies of the draft provisional order, when deposited, will be purchaseable as hereinafter approved.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking or application.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the city, town, or place where the proposed works will be made, or where the pier or harbour to which the intended application relates is situate; or if there be no such newspaper, then in some one and the same newspaper published in the county which such city, town, or place, or in some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also in every case to be inserted once at least in the London Gazette if the place to which the intended application relates is situate in England or Wales, in the Edinburgh Gazette if such place is situate in Scotland, or in the Dublin Gazette if such place is situate in Ireland.

PART II.—*Deposit on or before 30th November.*

(1.) The promoters are to deposit—

1. A copy of the advertisement published by them.

2. A proper plan and section of the proposed new works, if any; such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

1. In England or Ireland, in the office of the clerk of the peace for every county, riding, or division; in Scotland, in the office of the principal sheriff clerk for every county, district, or division, in which any proposed new work will be made, or in which the pier or harbour to which the intended application relates, or any part thereof, is situate.

2. At the custom-house, if any, of the port, sub-port, or creek to which the intended application relates.

(3.) The documents aforesaid are also to be deposited in the offices of the Admiralty and of the Board of Trade.

PART III.—*Deposit on or before 23rd December.*

(1.) The promoters are to deposit at the office of the Board of Trade—

1. A memorial of the promoters, signed by them or one of them, headed with a short title descriptive of the undertaking or application (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.

2. A printed draft of the provisional order as proposed by the promoters.

3. An estimate of the expense of the proposed new works, if any, signed by the person making the same.

(2.) They are also to deposit printed copies of the draft provisional order for public inspection at the custom-house (if any) of the port, sub-port, or creek to which the application relates.

(3.) They are also to deposit a sufficient number of such printed

copies at the office named in that behalf in the advertisement ; such copies to be there furnished to all persons applying for them at the price of not more than 1s. each.

The promoters must also comply with the standing orders of Parliament mentioned, *supra*, p. 338.

The following Sections of the Harbours Transfer Act, 1862, 25 & 26 Vict. c. 69, should be borne in mind :—

12. From and after the end of the present session of Parliament, any provision of The General Pier and Harbour Act, 1861, Amendment Act, requiring any deposit of documents to be made at the Admiralty Office shall be repealed.

14. From and after the end of the present session of Parliament, the following sections of The General Pier and Harbour Act, 1861, Amendment Act, and all provisions relative thereto in any other Act or in any provisional order of the Board of Trade contained, shall be read and construed as if the Board of Trade were named in the said sections instead of the Admiralty ; namely, sections seven, eight, nine, ten, and eleven.

The following regulations have been made by the Board of Trade as to applications for provisional orders.

BOARD OF TRADE REGULATIONS.

1. The plans and sections to be deposited in pursuance of Schedule (B.) Part II., to the General Pier and Harbour Act, 1861, Amendment Act, must be such plans and sections as would be required by the standing orders of the House of Commons, if the promoters, instead of applying for a provisional order, were proceeding by private bill ; and on the plans all tidal waters are to be coloured blue. The plans and sections are to be accompanied by an ordnance sheet, or, if no ordnance sheet is published, by a map, with the exact position of the proposed works laid down thereon.

2. The draft provisional order must be printed on one side of the page of paper, so as to leave the back of the page blank, and any schedule annexed must begin a new page. The name of the promoters, or of their agents, must be printed on the outside of every draft provisional order.

3. Especial care must be taken in framing draft orders to follow the precedents contained in the orders confirmed in the last two or three sessions.

4. The regulations below, Nos. 11 to 14 inclusive, must be printed in the form of a notice at the end of every draft provisional order.

5. Promoters desiring incorporation should register themselves under The Companies Act, 1862, and will be required to produce to the Board of Trade, either at the time of proving compliance with the provisions of the Pier and Harbour Act, or before the order is settled and made, the certificate of registration of the company.

6. Where the promoters are a company incorporated under The Companies Act, 1862, the draft deposited at the Board of Trade must be accompanied by a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company ; and when they are a company incorporated in any other manner the draft must be accompanied by a copy of every deed or instrument of settlement or incorporation, or Act of Parliament, relating to the company.

7. Where the promoter is an individual proprietor the draft deposited at the Board of Trade must be accompanied by a short statement signed by the promoter or his solicitor, stating concisely what is the nature of the promoter's interest; viz., whether tenant in fee, or for any and what more limited interest, and, if limited, under what instrument or settlement; and also stating in what manner it is proposed that the rights and obligations to be created by the order shall devolve.

8. The promoters will be required to pay a fee of 35*l.* towards the expense of settling the provisional order; this sum must be paid to the officer of the Board of Trade with whom the draft provisional order is deposited, and at the time of the deposit.

9. The draft provisional order which is to be deposited at the Board of Trade on or before the 23rd December must be deposited in triplicate, accompanied by a copy of every private or local Act, charter, deed, or other document of a like nature which is referred to therein, or which will be affected thereby.

10. The promoters must be prepared to prove compliance with the provisions of the Act concerning deposit and publication by the 10th January. Six days' notice will be given of the day and hour at which the promoters are to attend for the purpose at the Board of Trade. Printed forms of proof will be supplied, which should be filled up by the promoters, and brought with the requisite documents to the Board of Trade at the time fixed for proof.

11. Any objections to the provisional order which it is intended to urge on the Board of Trade must be sent in to that office before the 15th of January. A copy of such objections must also be sent at the same time to the promoters; and in forwarding the objections to the Board of Trade, the objectors or their agents should state that this has been done.

12. The Board of Trade will entertain and consider objections founded on alleged injury to public interests, or alleged violation of admitted principles, *e.g.*, "That the proposed work will injure a public harbour," or, "That tolls are to be imposed on ships which will derive no benefit from them;" and they will not proceed with any provisional order to which valid objections of this description are shown to exist. Objections arising out of competition, or out of opposition between local interests, they will only attempt to settle, provided the parties are willing to abide by their decision. When the parties cannot come to terms, the Board of Trade will not order a local inquiry, or attempt to anticipate the decision of parliamentary committees.

13. All memorials, objections, and other documents sent to or deposited with the Board of Trade must be on common foolscap paper, and written (or printed) on one side only.

14. The bill for confirming provisional orders will be brought in as early in the session as possible. All preliminary questions must, however, be definitely determined before the 1st March.

15. It is to be understood that provisional orders for extending the time for the construction of works already authorised will not be granted as a matter of course. It will require special reasons to induce the Board of Trade to entertain such applications where the works have not been commenced within the time originally fixed by Parliament, or have not been *bonâ fide* proceeded with, with a view to completion.

C. CECIL TREVOR.

Board of Trade, Harbour Department,
November, 1874.

The following Form is taken from a provisional order confirmed in 1876.

ORDER FOR THE CONSTRUCTION, MAINTENANCE, AND REGULATION OF A PIER, LANDING-PLACES, AND OTHER WORKS AT R—, IN THE COUNTY OF S—.

1. The R— Pier Company (Limited) shall be the undertakers of the works authorised by this order, and shall have and may exercise the several powers, privileges, and authorities by this order conferred on the undertakers, and may carry this order in all respects into execution. Undertakers.

See *supra*, p. 120, for objects clause of Memorandum of Association of a pier company. The articles, *supra*, p. 190, *et seq.*, are suitable.

2. The Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (except so much thereof as relates to the purchase or taking of lands otherwise than by agreement), shall respectively be incorporated with this order. Incorporation of Lands Clauses Acts.

3. For the purposes of the works authorised by this order, the company may from time to time, by agreement, enter upon and take and may use such of the lands shown on the plans deposited for the purposes of this order as they think requisite. Power to take lands by agreement.

4. Subject to the provisions of this order, and subject also to such alterations (if any) in the plans and sections deposited with reference to this order as the Board of Trade require from time to time, before the completion of the works, in order to prevent injury to navigation, the Company may, on the lands taken by them under this order, and in the lines and situations and according to the levels shown on the deposited plans and sections (so far as the same are shown thereon), and within the limits of deviation shown on these plans, make and maintain the pier, landing-places, and works authorised by this order. Power to make works.

5. The works authorised by this order comprise the following:— Description of works authorised.

1. A pier, commencing on the sea-beach, at a point on the mainland opposite — Place, and proceeding seaward in an easterly direction towards and below low-water mark, to a distance of 800 feet, or thereabouts, and of a width of not less than twenty feet, and a height above high-water mark of not less than thirteen feet :
2. All such sea-walls, roads, approaches, landing-places, and

other works connected with the said pier, for the convenient loading and unloading of vessels, and for embarking and landing of passengers, cattle, coals, goods, merchandise, and things as shall be deemed necessary.

Penalty for obstructing works.

6. Every person who wilfully obstructs any person acting under the authority of the company in setting out the lines of the works by this order authorised, or who pulls up or removes any poles or stakes driven into the ground for the purpose of setting out the lines of the said works, or defaces or destroys the said works or any part thereof, shall be guilty of an offence, and shall for every such offence be liable to a penalty not exceeding five pounds.

This clause is new.

Power to take rates in Schedule.

7. When a certificate has been obtained from the Board of Trade that all consents and approvals on the part of the Board of Trade required under this order or otherwise necessary to the due construction of the works authorised by this order have been given, the company may, subject and according to the provisions of this order, for the use of the pier, landing-places, and works and conveniences connected therewith, demand and take in respect of the vessels, boats, goods, animals, fish, persons, and things described in the Schedule to this order any sums not exceeding the rates in that Schedule mentioned.

Further powers as to works, and to sell or lease undertaking.

8. The company may from time to time erect upon or near the pier or landing-places, or the approaches thereto, tramways, toll-houses, seats, waiting, refreshment, and other rooms, and may mortgage, sell, and lease their undertaking and works, or any part or parts thereof, or the tolls, rates, duties, and other charges authorised to be taken by this order, upon such terms (pecuniary or otherwise) and under such restrictions and conditions as they think fit, and a mortgagee in possession, purchaser, or lessee shall have and may exercise all the same powers of levying and recovering tolls, rates, and dues, and all such other rights and powers as the company have or might exercise under this order, and shall be subject to the same provisions as to accounts and otherwise as the company are subject to under this order.

It has been held that, where a company authorised by provisional order to construct a pier, is wound up voluntarily, a purchaser from the liquidator apart from the above clause becomes "undertaker," and as such is entitled to the rights of the company, and is subject to the conditions of the order. *The Merle*, 31 L. T., N. S. 447.

9. If at any time it appear to the Board of Trade that the clear annual income derived from the pier and works on the average of the then last three preceding years, after payment of all expenses and outgoings other than payments of interest or principal in respect of money borrowed shall exceed interest at the rate of 10% per cent. per annum on the entire sum from time to time appearing to the Board of Trade to have been expended by the company in executing works authorised by this order, the Board of Trade may, if in their discretion they think fit, reduce the rates leviable under this order to such amounts as will be sufficient to provide the aforesaid interest at the rate of 10% per cent. per annum, and the rates shall thereupon be reduced accordingly, but with power to the Board of Trade at any time, and from time to time, to raise them again to not exceeding the amounts specified in the Schedule to this order.

Board of Trade may reduce rates.

10. The company, within one month after sending to the clerk of the peace the copy of their annual account in abstract, shall send a copy of the same to the Board of Trade; and the 16th section of The General Pier and Harbour Act (1861) Amendment Act shall apply to and include any and every such account. If the Company refuse or neglect to comply with this provision, they shall for every such refusal or neglect be liable to a penalty not exceeding 20%.

Annual account to be sent to Board of Trade.

By a 19 of 25 Vict. c. 19, The Harbours, Docks, and Piers Clauses Act, 1847, is to be deemed to be incorporated with every provisional order. Section 50 of the last mentioned Act provides for an annual account.

11. Fishing vessels belonging to countries with which for the time being treaties exist exempting from duties and port charges such vessels when forced by stress of weather to seek shelter in ports or on the coasts of the United Kingdom shall, when forced by stress of weather to make use of the pier and works authorised by this order, and not breaking bulk while making use thereof, be exempt from rates leviable under this order.

Certain fishing vessels under stress of weather exempt from rates.

12. The company may grant to passengers, promenaders, and others, pass tickets for the use of the pier and works at such rates, on such terms, and for such periods, not exceeding one year, as may be agreed upon, but so that no preference be given to any person. A pass ticket shall not be transferable nor be used by any person other than the person to or for

Pass tickets for use of pier.

whom it is granted, nor by any person after the period limited for its use. If any person acts in any way in contravention of this provision, or uses or attempts to use any false or counterfeit ticket, he shall for every such offence be liable to a penalty not exceeding 20s., to be recovered and applied as penalties are recoverable and applicable under The Harbours, Docks, and Piers Clauses Act, 1847, for all the purposes of which Act this order shall be deemed the special Act.

Exemptions
of custom
house officers
from rates.

13. Officers of customs, being in the execution of their duty, shall at all times have free ingress, passage, and egress from, to, over, and along the pier, and works by land, and with their vessels without payment.

Steam en-
gines, cranes,
mooring posts,
&c.

14. The company may provide and use such steam engines, piling engines, cranes, buoys, mooring posts, mooring craft, weighing machines, tackle, and other machinery, vessels, apparatus, and conveniences as they think proper for carrying on the business of the company, or for any of the purposes of this order, and may demand and take such sums for the use thereof as they think reasonable.

Restriction
and use of
pier.

15. Nothing in this order shall entitle any person with any vessel or boat to ship or unship at any pier, jetty, or landing place authorised by this order, any sheep, cattle, or merchandise, or to ship or unship there anything which in the judgment of the company might in any way interfere with the use of the pier, jetties, or passengers' landing-places, for recreation or for embarking or landing of passengers, except at the places provided for the purpose of landing or shipping of cattle, merchandise, and other like things.

Pier to be
deemed
within the
contiguous
jurisdiction.

16. The pier and works shall, in respect of all matters, crimes, or offences arising or committed thereon, requiring the cognisance of any justice of the peace, be deemed and taken to be within the same jurisdiction as that part of the shore with which it shall immediately communicate.

As to lights
during con-
struction of
works.

17. Before commencing the works authorised by this order, the company shall apply to the Board of Trade for directions as to the lights to be exhibited, and shall in all respects obey any direction given upon such application, or afterwards from time to time given as to lights by the Board of Trade during the construction of the works; and compliance with directions so given shall satisfy and be in place of every other statutory requirement as to lights during the construction of the works.

If the company refuse or neglect to observe any direction of the Board of Trade as to lights during the construction of the works, they shall for each offence be liable to a penalty not exceeding 10*l*.

18. After completion or permanent discontinuance or abandonment of the works authorised by this order, the company shall, at the outer extremity of the pier and works, or the completed portion thereof, exhibit from sunset to sunrise such light or lights (if any) as shall from time to time be directed by the corporation of Trinity House, Deptford Strond, and shall apply to that corporation for directions as to lighting; and the company shall be liable to a penalty not exceeding 10*l*. for every calendar month during which they omit so to apply.

As to lights
after comple-
tion of works.

19. Sections 16 to 19, inclusive, of The Harbours, Docks, and Piers Clauses Act, 1847, shall not be incorporated with this order.

Parts of Har-
bours, &c.
Act excepted.

20. The company shall have the appointment of meters and weighers on or in connection with the pier and works.

Meters and
weighers.

21. The company may make byelaws for the regulation and control of the fishermen and others, and goods and traffic, on the pier and works authorised by this order; but such byelaws shall not come into operation until the same have received the allowance and confirmation of the Board of Trade, which shall be sufficient for all purposes.

Power to make
byelaws.

See Section 83 of 10 & 11 Vict. c. 27.

22. No vessel or boat shall, without the consent of the pier-master, anchor within a distance of fifty yards, measured in any direction, from any part below low-water mark of the works by this order authorised to be constructed.

Vessels not to
anchor within
fifty yards
without con-
sent.

23. No vessel or boat, except steamboats and pleasure boats embarking or disembarking passengers and their luggage, shall be allowed to be moored alongside the pier without the consent of the company.

Vessels not to
be moored to
pier without
consent.

24. In the following cases; (that is to say,)

1. If within two years from the date of the passing of the Act confirming this order the works authorised by this order should not be substantially commenced; or
2. If such works, after having been commenced, should be

Power to
cease in
certain events.

virtually suspended for twelve consecutive calendar months,

the powers by this order given for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of such works as shall be then completed, unless the time for completion be extended by the special direction of the Board of Trade.

Board of Trade certificate to be conclusive evidence.

A certificate from the Board of Trade to the effect that the works have not been substantially commenced, or that they have been virtually suspended for twelve consecutive calendar months, shall, for the purposes of this order, be conclusive evidence of the facts stated in such certificate.

Saving rights under Crown Lands Act, 1866.

25. This order shall not be taken as a consent to the surrender of any rights, interests, powers, authorities, or privileges transferred to the management of the Board of Trade by The Crown Lands Act, 1866, nor shall any works under this order be commenced within the limits affected by any such rights, interests, powers, authorities, or privileges, without the assent of the Board of Trade having been first obtained.

Costs of order.

26. All the costs, charges, and expenses of and incident to the obtaining of this order, and otherwise in relation thereto, shall be paid by the company.

Short title.

27. This order may be cited as The R—— Pier Order, 1876.

The Schedule to which the foregoing order refers.

[contains a specification of the rates.]

PROVISIONAL ORDERS UNDER THE SEA FISHERIES ACT, 1868 (31 & 32 VICT. c. 45).

The following regulations have been issued by the Board of Trade for the instruction and guidance of persons applying for fishery orders under Part III. of the above Act :—

The Sea Fisheries Act, 1868, came into force on the 1st of February, 1869, and repealed, among other enactments, the Oyster and Mussel Fisheries Act, 1866.

The Board of Trade, to whom the administration of Part III. of the above Act has been committed, have issued the following regulations for the purpose of facilitating and systematising applications for grants under its provisions.

I.—General Principles on which Exclusive Rights of Fishery or
Regulative Powers over Fisheries will be Granted.

The following comprise the several classes of grants or concessions which appear to the Board of Trade to fall within the scope and intention of the above-named Act, and for which they will be prepared to consider applications :—

1. Appropriations of moderate areas of unproductive sea-bed or foreshore for the establishment of new fisheries or local depôts.
2. Appropriations of small areas of already productive ground for oyster layings or depôts in the vicinity of public beds.
3. Concessions of exclusive fishery rights to owners or occupiers of existing fisheries, but within such limits and conditions only as may make such concessions beneficial to the public.
4. Powers for regulating or restricting unlimited fishing on oyster or mussel beds in cases where it is proved that such fishing is carried on in so wasteful a manner as to have the effect of exhausting the beds and diminishing the supply, without corresponding advantage to the public.

Applications for grants of exclusive fishery rights coming under any of the following heads cannot be entertained :—

1. Appropriations of large areas of already existing public beds or productive dredging-ground.
2. Appropriations of larger extents of ground than the claimants have the means of beneficially cultivating, whether under the plea of regulating and superintending the fishery, or for any other purpose.
3. Appropriations of large areas for the purpose of enabling the grantees to exercise licensing or sub-letting powers.

Applications for regulative or restrictive powers operating unequally upon different classes of fishermen cannot be entertained.

The only ground for the concession of exclusive fishery rights or restrictive powers over any portion of the sea shore is the expectation that by these means the supply of oysters or mussels will be materially increased, and the public thereby benefited. Such expectation must consequently be shown to exist in all cases of orders under this Act, and especially in the case of an order affecting an already productive dredging-ground.

II.—Title to Soil.

By the Crown Lands Act, 1866 (29 & 30 Vict. c. 62, ss. 7 to 25), the administration of the Crown rights over the foreshore and bed of the sea are, with certain exceptions, transferred to the Board of Trade. [See *supra*, p. 351.]

When an application for a fishery grant includes foreshore or sea bed under the management of the Board of Trade, that board will, in administering the provisions of Part III. of The Sea Fisheries Act, 1868, deal also with the questions affecting the title to the soil. Upon this subject no positive or universal rule can at present be laid down, but in dealing with the proprietary rights of the Crown, it will be the duty of the board, on the one hand, to reserve for the public purse such proportion of any ultimate profits arising from the beneficial occupation of the soil as may fairly and properly belong to the owner of it; whilst on the other hand, they will carefully abstain from throwing obstacles in the

way of public improvements, and will be averse to imposing any such terms as may, especially in the infancy of an undertaking, impede or delay its progress.

They will be prepared to consider favourably proposals founded on the basis of determining the rent or royalty according to the profits actually made, or the quantity of oysters or mussels produced or sold by the promoters.

In the few cases where the bed of the sea or foreshore to which an application relates belongs to the Crown, and is not transferred to the management of the Board of Trade, but reserved to the Commissioners of Woods, and in cases in which the sea bed or foreshore forms part of the possessions of the Duchies of Lancaster or Cornwall, the consents mentioned in Section 46 of The Sea Fisheries Act, 1868, must be obtained. In cases where the grant of the order applied for would take away or abridge any right of several fishery or any other right enjoyed by any person as specified in Section 48 of The Sea Fisheries Act, the consent of such person must be obtained. In all cases these consents, in writing, must be forwarded with the draft order to the Board of Trade.

In cases where the bed of the sea or foreshore to which an application relates does not belong to her Majesty in right of her Crown, or to the Duchies of Lancaster or Cornwall, The Lands Clauses Consolidation Act must be incorporated with the proposed order, as directed by Section 47 of The Sea Fisheries Act.

III.—Form of Procedure in Applying for an Order under Part III. of The Sea Fisheries Act, 1868.

1. The first step on the part of the promoters is to transmit a memorial to the Board of Trade, as directed by Section 29 of the Act. The memorial should be transmitted in duplicate, written on common foolscap paper, on one side of the paper only, with a wide margin, and should contain the following information:—

- (a.) A description of the existing conditions of the proposed fishery,—whether it is barren or cultivated, and to what extent; and whether it contains any public or private beds, and in what condition.
- (b.) A statement of the manner in which it is intended to cultivate the ground applied for.
- (c.) In the case of an order for regulating a fishery, a precise statement of the nature of the proposed restrictions; of the proposed tolls (if any); of the manner in which they are to be levied and expended; and of the constitution of the corporation or other body by whom the powers in question are to be exercised.
- (d.) A statement of the means in the shape of income or capital possessed or anticipated by the promoters for this purpose.
- (e.) The names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the soil included in the proposed fishery; and the nature of their title.
- (f.) Whether any, and if so, what arrangements have been or are proposed to be made with them.

The memorial should be also accompanied by the following documents:—

- (i.) Where the promoters are a company registered under "The Com-

panies Act, 1862," by a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company ;

- (ii.) When they are a company formed in any other manner, by a copy of every deed or instrument of settlement, partnership, or incorporation, or Act of Parliament, relating to the company.
- (iii.) In every instance by a plan in duplicate upon an ordnance map or other chart of the locality, defining accurately the position, area, and boundaries of the ground proposed to be taken, showing what part is above and what below low-water mark, and what part, if any, is above high-water mark. In this map or chart all portions of the sea-bed or estuary below low-water mark not comprised in the proposed fishery are to be coloured blue, and the proposed fishery itself pink, and the area should be stated either in acres or by other measurement.
- (iv.) In cases where ground is proposed to be taken, which does not belong to her Majesty in right of her Crown or to the Duchy of Lancaster or Cornwall, by a plan of the ground, and a book of reference thereto describing the same, and the owners or reputed owners, lessees or reputed lessees, and occupiers thereof ; and
- (v.) In cases where the construction of works such as piers, jetties, &c., is contemplated, by a plan and sections, and estimate for such works, signed by the persons making the same.
- (vi.) If the construction of tanks or other similar works of a permanent nature is contemplated, they should be described in the memorial ; their dimensions should be given and their sites should be shown on the plan of the fishery.

2. No memorial can be considered by the Board of Trade unless containing the whole of the foregoing information, which should be classified under separate headings in the manner above shown ; and the attention of promoters is called to the fact that statements contained in the memorial may, at a subsequent stage of the order, become the subject of local investigation.

3. If, after receiving the memorial, the Board of Trade decides to proceed with the case, the promoters will be required, in accordance with the Act (Section 30), to transmit, in duplicate, a draft of the proposed order, printed on foolscap paper, on one side of each page only, and with a wide margin.

An order made by the Board of Trade may include, if desirable, provisions for the constitution of a board or body corporate for the purpose of such order. See Section 29.

4. The promoters will be required to deposit with the draft order at the Board of Trade a fee, the amount of which will depend on the nature of the application ; and will, in addition, be required to deposit at the same time and place, or to give security for, such sum as the Board of Trade may require in order to provide for the travelling and personal expenses of the inspector when making the inquiry directed in the 32nd Section of the Act.

5. The draft order, with such modifications as the Board of Trade may require, must be circulated as follows, viz. :—

- (a.) Twelve copies must be deposited at the Board of Trade.
- (b.) One copy must be deposited, and lie for public inspection free of charge during the month following the date of the first advertisement mentioned below, at the custom-house of the port, and

also of the sub-port or creek (if any) within or adjacent to which the proposed fishery is situate; together with one copy of the plan or ordnance map or chart of the locality showing the limits of the proposed fishery; and two copies of the plan and of the book of reference thereto deposited (if any).

- (c.) A sufficient number of copies of the draft order must also be deposited at a local office to be named in that behalf in the advertisement mentioned below; such copies to be sold at a charge not exceeding 1s. each; and facilities must be given at such office for the inspection of the plans.

6. The promoters must also give notice of the application by public advertisement, to be inserted twice at least in a county or other local newspaper circulating in or near the place where the site of the proposed fishery is situated, and once at least in the *Times* and *London Shipping and Mercantile Gazette*. The advertisement must contain a statement, in an abridged form, of all the principal objects of the order. It must also give the address of the local office where the draft order can be seen and obtained, and an intimation that written objections will be received by the Board of Trade during the month following the date of its publication.

7. The promoters must also cause copies of such advertisement to be posted up in conspicuous type, in the form of notices or placards, in at least six places in the neighbourhood of the proposed fishery, where they may be seen by fishermen and others interested in the undertaking; and, if the Board of Trade so requires, at other places.

8. Copies of the advertisement must also be forwarded by post to or left at the residences of the owners or reputed owners, lessees or reputed lessees, and occupiers (if any) of the portion of the sea-shore to which the draft order relates, and of the lands adjoining thereto.

9. During the month following the date of the first advertisement of the draft order the Board of Trade will receive any objections or representations made to them respecting the same. All such objections must be transmitted in duplicate, written on common foolscap paper on one side of the page only, and with a wide margin. A copy of such objections must also, at the same time, be sent to the promoters; and in sending the objections to the Board of Trade, the objectors or their agents should state that this has been done. A copy of this rule must be printed at the foot of each draft order.

10. No order, when granted, will entitle the promoters to interfere with any lawful purpose of navigation or anchorage (see Section 53 of the Act). Nor will the Board of Trade be disposed to entertain any application which interferes sensibly or materially with the enjoyment and use of the shore for purposes of walking, bathing, boating, beaching, or landing.

11. As soon as conveniently may be after the expiration of the said month, the Board of Trade will send an inspector to hold a sitting or sittings in some suitable place in the neighbourhood of the proposed fishery, and to take and receive evidence, on oath or otherwise, and information offered, as provided for in the 32nd Section of the Act. Notice of such sitting or sittings will be published in one or more local newspapers at least fourteen days before the holding thereof.

12. On the report of the inspector, the Board of Trade will either refuse the application, or make the order in such form and manner as they think expedient; and, in the latter case, the order, so approved, is

**Board of Trade, Harbour Department,
July, 1872.**

The following is a skeleton Form of Order for the establishment and maintenance of an oyster and mussel fishery :—

(1.) ORDER FOR THE ESTABLISHMENT AND MAINTENANCE BY THE OYSTER COMPANY, LIMITED, of an Oyster and Mussel

Fishery at _____ in the Estuary of the _____ in the
County of _____.

1. The Oyster Company, Limited, (in this Order called, the Company,) shall be the undertakers of the fishery mentioned in this order.

2. For the purposes of the fishery and works authorised by this order, the company may from time to time enter on, take, and use all or any part of the lands described in the plans and book of reference deposited for the purposes of this order.

3. The Lands Clauses Consolidation Act, 1845, and The Lands Clauses Consolidation Acts Amendment Act, 1860, are hereby incorporated with this order.

(If the land belongs to the Crown or to the Duchies of Lancaster or Cornwall these two clauses will not apply, and must be omitted.)

4. The following are the company's fishery grounds under this order (as shown on plans deposited at the Board of Trade) ; namely, all those parts of the foreshore and bed of the _____ situate within the several parishes of _____, in the county of _____, containing an area of _____ or thereabouts; and bounded as follows, that is to say :—

(Here insert an accurate description of the locality, position, and boundary lines of the fishery.)

5. This order confers on the company a right of oyster and mussel fishery within the limits above mentioned.

6. The limits of the said several fishery shall be marked out as follows ; that is to say :—

7. In the event of the marks by the last foregoing article prescribed being obliterated by storm or otherwise, they shall be replaced by the company, and notice of the said limits may be given to fishermen, dredgermen, and other persons as follows; that is to say:—

8. No buildings, erections, embankments, or other works, other than

the marks mentioned in Article [6.] of this order, shall at any time be commenced or executed within the limits above described without the previous sanction and approval in writing of the Board of Trade.

9. The company shall render to the Board of Trade such accounts of their capital, expenditure, and income, and of all oysters and mussels sold by the company, in such form and at such times as the Board of Trade may require, and shall allow the Board of Trade or any person appointed by the Board of Trade to inspect the fishery and all books and documents in their possession relating thereto, and shall give to such Board or person all such information relating thereto as they or he may require.

10. This order shall continue in operation for _____ years from its confirmation by Act of Parliament, and no longer.

11. This order shall not be taken as a consent to the surrender of any rights, interests, powers, authorities, or privileges transferred to the management of the Board of Trade by The Crown Lands Act, 1866.

12. This order may be cited as The _____ Fishery Order, 18 ____.

Notice to Objectors.—During the month following the date of the first advertisement of the draft order, the Board of Trade will receive any objections or representations made to them respecting the same. All such objections must be transmitted in duplicate, written on common foolscap paper on one side of the paper only, and with a wide margin. A copy of such objections must also, at the same time, be sent to the promoters; and in sending the objections to the Board of Trade, the objectors or their agents should state that this has been done.

For objects clause of a memorandum of a Fishery Company, see *supra*, p. 116. The Articles, *supra*, p. 190, are suitable.

PROVISIONAL ORDERS UNDER "THE TRAMWAYS ACT, 1870" (33 & 34 VICT. c. 78).

The above Act enables the Board of Trade to make provisional orders for the construction of tramways, and a large number have been made and confirmed by Parliament. Mr. Sutton's work, intituled, "The Tramway Acts," &c., will be found to contain some valuable information as to the course of proceeding under the Act; but the rules of the Board have been altered since that work was published, and it may be convenient, therefore, to give those now in force. They are as follows :—

BOARD OF TRADE RULES.

The Board of Trade, under the powers conferred upon them by Section 64 of The Tramways Act, 1870, have made the following rules with respect to provisional orders :—

Incorporation.

1. Promoters of Tramways desiring incorporation must register themselves under the Companies Act, 1862.

Advertisements in October or November.

2. The publication of the advertisements required by Section 6 (1) of the Act is to be made in manner prescribed by Part I. of Schedule B. to the said Act.

3. The advertisements must state that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter, addressed to the Assistant Secretary of the Railway Department of the Board of Trade, on or before the 15th January next ensuing, and that copies of their objections must at the same time be sent to the promoters.

Construction of Tramway.

4. Where a tramway is proposed to be so laid that for a distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or if it is intended to run thereon carriages or trucks adapted to run upon railways a less space than ten feet six inches, the promoters must comply with the requirements of the following standing orders. The advertisement of the intention of the promoters to make application for a provisional order in pursuance of Section 6 of the Act, must contain a description of each such place. Notices must also be posted in the streets in compliance with standing order No. 10.

Standing order No. 6 of the House of Commons for Session 1877. (See also House of Lords standing order No. 6.)

In cases of bills for laying down a tramway in any street, the notices shall specify at what point or points, and on which side of the street, it is proposed to lay such tramway, so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches shall intervene between the outside of the footpath on the side of the road and the nearest rail of the tramway.

Standing order No. 10 of the House of Commons for Session 1877. (See also House of Lords standing order No. 10.)

In the months of October and November, or one of them, immediately preceding the application for any bill for laying down a tramway, notice thereof shall be posted for fourteen consecutive days in any street or streets along which it is proposed to lay the tramway, in such manner as the authority having the control of such street or streets shall direct; and if after application to such authority no such direction shall be given, then in some conspicuous position in such street or streets; and such notice shall also state the place or places at which the plans of such tramways will be deposited.

Standing order No. 45 of the House of Commons for Session 1877. (See also House of Lords standing order No. 45.)

In cases of bills for laying down a street tramway, the plans shall indicate whether it is proposed to lay such tramway along the centre of any street, and if not along the centre, then on which side of, and at what distance from an imaginary line drawn along the centre of such street, and whether or not, and if so, at what point or points it is proposed to lay such tramway, so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches shall intervene between the outside of the footpath on either side of the road, and the nearest rail of the tramway.

Standing order No. 13 of the House of Commons for Session 1877. (See also House of Lords Standing order No. 13.)

On or before the fifteenth day of December immediately preceding the application for a bill for the laying down a tramway, notice in writing shall be given to the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of the said highway where, for a distance of thirty feet or upwards, it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or a less space than ten feet six inches, if it is intended to run on the tramway carriages or trucks adapted for use upon railways.

5. The notice referred to in the above-named standing order No. 13, must contain a notification that if such owner, lessee, or occupier abutting on any part of the highway where such less space is proposed, dissents from the tramway being so laid, he may express his dissent by a statement in writing, addressed to the Assistant Secretary of the Railway Department of the Board of Trade, on or before the 15th January next ensuing.

Deposit of Documents on or before 30th November.

6. The deposit of documents required by Section 6 (2) of the Act is to be made as required by Part II. of Schedule B. The plans and sections to be deposited must be such plans and sections as would be required by the standing orders, for the time being, of the House of Commons, if the promoters, instead of applying for a provisional order, were proceeding by private bill; and all tidal waters are to be coloured blue on the plans.

7. The documents required by Part II. of the said Schedule, to be deposited for public inspection in the office of the parish clerk of every parish, shall, in the case of any extra-parochial place, be deposited with the parish clerk of some parish immediately adjoining thereto, or, in the case of any place within the limits of the metropolis, as defined by the 18th and 19th Vict. cap. 120, intituled, "An Act for the better local management of the metropolis," except the city of London, with the clerk of the vestry of each parish in Schedule A., and with the clerk of the district board of parishes in Schedule B. of the said Act. In every case in which the proposed works are intended to be made in or through one or more parishes or districts

the deposit of a copy of so much only of the plans and sections as relates to each parish or district in or through which the work is intended to be made shall be necessary.

Deposit of Documents on or before 23rd December.

The deposit of documents required by Section 6 (3) of the Act must be made as required by Part III. of Schedule B.

Consent of Local and Road Authorities.

8. A complete list of the local authorities through whose districts the proposed tramway will pass must accompany the deposit on 23rd December; and if any such district is or forms part of a highway district, under the provisions of "the Highway Acts," a statement to that effect must accompany the deposit. Where there is a road authority distinct from the local authority, a description of such road authority must also be given.

9. A copy of the notice posted in the streets in October or November next before the application, which is required by Rule No. 4, must accompany the application on or before the 23rd December.

10. In all cases where for a distance of thirty feet or upwards it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or a less space than ten feet six inches if it is intended to run on the tramway carriages or trucks adapted for use upon railways, a complete list of all the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of the highway, where such less space is proposed, together with a copy of the notice which was served on them on or before the 15th December, as required by Rule No. 4, must accompany the application on or before the 23rd December. The list must specify each street separately and give the number or name of the house. If there is more than one objection in respect of any one house, such objections will be treated as one objection only, in computing the number of objections on the part of owners and occupiers referred to in Section 9 of the Act.

11. Where the application is made by any local authority, a certified copy of the resolution approving of the intention to make the application, together with a copy of the notice convening the special meeting to consider it, must accompany the deposit on 23rd December. Proof must also be furnished that the requisite proportion of members constituting the local authority were present and voted at the meeting, as prescribed in Part III. of Schedule A. to the Act.

12. Where an application is made by any promoters, not being the local authority of the district in which the tramway is proposed to be laid, evidence of the consent required by Section 4 of the Act, must be given before the application can be entertained. Such evidence should be given by furnishing a certified copy of the resolution passed at a meeting of the local or road authority, as the case may be, at which the application was approved, together with a copy of the notice convening the meeting, which notice must contain a statement that the subject of the proposed tramway will be brought before the meeting.

Purchase of Land.

13. Where the promoters propose to take any lands for the purpose of a tramway, the contracts for the purchase of all the lands required must be produced at the time when the proofs of compliance with the provisions of the Act concerning deposit and publication are produced.

General Instructions.

14. The draft provisional order, which is to be deposited at the Board of Trade on or before the 23rd December, must be in triplicate and must be printed on one side of the page of paper, so as to leave the back of the page blank, and any schedule annexed must begin a new page. The names of the promoters, or of their agents, must be printed on the outside of every draft provisional order, and there should be a notice at the end of it stating that objections are to be sent in manner provided by Rule No. 3.

15. All memorials, objections, and other documents sent to or deposited with the Board of Trade must be on common foolscap paper.

16. The promoters will be required to pay a fee of 35*l.* towards the expenses of the provisional order at the time of the deposit of the draft provisional order. This payment will not be taken to cover the cost of inquiries or other matters arising out of the application; with respect to costs in such matters, security must be given from time to time by the promoters as the Board of Trade may require.

17. The length of each tramway must be given in miles, furlongs, and chains in the clause describing the works.

18. Where the promoters are a company incorporated under The Companies Act, 1862, the draft provisional order deposited at the Board of Trade must be accompanied by a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company; and when they are a company incorporated in any other manner, the draft must be accompanied by a copy of every deed or instrument of settlement or incorporation, or Act of Parliament relating to the company.

19. In forwarding to the Board of Trade objections before 15th January as provided by Rule No. 3, the objectors, or their agents, are to state that a copy of such objections has been forwarded to the promoters.

20. The promoters must be prepared to prove compliance with the provisions of the Tramways Act concerning deposit and publication by the 10th January. Six days' notice will be given of the day and hour at which the promoters are to attend for the purpose at the Board of Trade. Printed forms of proof will be supplied, on application to the Railway Department of the Board of Trade; these should be filled up by the promoters, and brought with the requisite documents to that department at the time fixed for proof.

21. The bill for confirming provisional orders will be brought in as early in the session as possible. All preliminary questions must, however, be determined before the 1st March.

Deposit and Advertisement of Provisional Order, when made, as required by Section 13.

22. When a provisional order has been made, and before it is intro-

duced into the confirmation bill, the promoters will be required to submit to the Board of Trade the receipt of the clerk of the peace or sheriff clerk, or to prove by affidavit the deposit of the order with such officer as required by Part IV. of Schedule B. to the Act (a). They must also produce a copy of the local newspaper containing the advertisement of the order. This advertisement must state the office where printed copies of the order can be obtained. The office must be the office named in the original advertisement of the application. Proof must also be given that the advertised order is a correct copy of the order delivered by the Board of Trade to be advertised, that it was inserted in the newspaper in which the original advertisement of the application was published, and that a sufficient number of printed copies of the order have been deposited for sale at the office named in the original advertisement, with a statement of the price for which they may be obtained.

(a) Section 14 of the Act requires that this advertisement shall be published no later than the 25th April.

Deposit of Money into the Chancery Division of the High Court of Justice as required by Section 12 of the Act.

23. After the provisional order is ready, and before the same is delivered by the Board of Trade, the promoters, if they are not a local authority, shall pay as a deposit a sum of money not less than five per centum on the amount of their estimate of the expense of the construction of the tramway, as follows ; namely,

Where the tramway or any part thereof will be situate in England,—into the Chancery Division of the High Court of Justice in England to the credit of the particular tramway :

Where the tramway will be situate wholly in Scotland,—either into the Chancery Division of the High Court of Justice in England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by Act of Parliament or Royal Charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland *Ex parte* the particular tramway.

24. The Board of Trade may issue their warrant to the promoters for such payment into Court, which warrant shall be a sufficient authority for the persons therein named, or the majority or survivors of them, to pay the money therein mentioned into the Chancery Division of the High Court of Justice in England or into the bank therein mentioned, in the name and with the privity of the officer therein mentioned if any, and for that officer to issue directions to such bank to receive the same, to be placed to his account there according to the method (prescribed by statute, or general rules or orders of court or otherwise,) for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into Court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective Court is for the time being permitted to be invested, or of exchequer bills (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase) ; and in that case the Board of

Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks, funds, securities, or exchequer bills by the persons therein named.

25. Where money is so paid into the Chancery Division of the High Court of Justice, the Court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the Court thinks fit.

26. In the subsequent provisions of these rules, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or exchequer bills transferred or deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorising the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

27. The Court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid or transferred to the applicants, or as they direct, if, within the time by the order prescribed, or within the time prolonged by the special direction of the Board of Trade under Section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the order, the promoters thereby empowered to make the tramway, complete it, and open it for public traffic after inspection by an inspector appointed by the Board of Trade, and upon a certificate of the Board of Trade that the tramway is fit for public traffic, as provided by Rule 34: provided, that if within such time as aforesaid any portion of a line of tramway authorised by an order is opened for public traffic, after such inspection as aforesaid, and on such certificate under Rule 34 as aforesaid, the said Court shall, on production of a certificate, purporting to be signed by a secretary or assistant secretary of the Board of Trade, that such portion has been opened, and specifying the proportion of the deposit fund to be so paid, order a proportionate amount of the deposit fund to be paid to the depositors, or as they direct.

28. If the promoters empowered by the order to make the tramway do not within the time in the order prescribed, or within such prolonged time as aforesaid, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the order, complete the tramway, and open it for public traffic, then and in every such case the deposit fund, or so much thereof as shall not have been repaid to the depositors, shall, from and after the expiration of the time aforesaid, be applicable, and after due notice in the London or Edinburgh Gazette, as the case may require, shall be applied towards compensating all road authorities for the expense incurred by them in taking up any tramway or materials connected therewith placed by the promoters in or on any road vested in or maintainable by such road authorities respectively, and in making good all damage caused to such roads by the construction or abandonment of such tramway, and shall be distributed in satisfaction of such compensation in such manner and in such proportions as to the Chancery Division of the High Court of Justice in England, or Court of Exchequer in Scotland, may seem fit; and if no such compensation shall be payable, or if a portion of the said deposit fund shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said

deposit fund, or such portion of it as may not be required as aforesaid, shall either be forfeited to Her Majesty, and shall accordingly be paid or transferred to or for the account of Her Majesty's exchequer, in such manner as the Court in which the deposit is made thinks fit to order, on the application of the solicitor of Her Majesty's treasury, on notice to such parties (if any) as the Court thinks fit; and the deposit fund, when so paid or transferred, or the proceeds thereof, shall be carried to and form part of the Consolidated Fund of the United Kingdom, or in the discretion of the Court, if the promoters are a company, and such company is insolvent or has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to such receiver, or to the liquidator or liquidators of the company, or be otherwise applied as part of the assets of the company for the benefit of the creditors thereof. [See *In re Bradford Tramways Co.*, 4 Ch. Div. 18.]

29. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in Court; and the Court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly.

30. If either House of Parliament refuse to confirm any provisional order in respect whereof a deposit has been made under these rules, or authorise a portion only of any tramway comprised in such order, or if any such provisional order be withdrawn before the same is confirmed by Parliament, the Court shall, upon production of a certificate to that effect purporting to be signed by a secretary or assistant secretary to the Board of Trade, order the deposit fund or a proportionate part thereof, as the case may be, to be paid to the depositors, or as they shall direct.

31. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

32. Any application under these rules to the Chancery Division of the High Court of Justice shall be made in a summary way by petition.

33. Copies of the order as settled by the Board of Trade can be obtained by the promoters from the Queen's printers, at the expense of the promoters, by an order to be obtained in the Railway Department of the Board of Trade.

Opening of Tramways.

34. The promoters shall give to the Board of Trade at least fourteen days' notice in writing of their intention to open any tramway, or portion of a tramway, and such tramway, or portion of tramway, shall not be opened for public traffic until an inspector appointed by the Board of Trade has inspected the same, and the Board of Trade has certified that it is fit for such traffic.

PROLONGATION OF TIME FOR THE COMMENCEMENT OR COMPLETION OF WORKS.

The Board of Trade, under the powers conferred upon them by Section 18 of The Tramways Act, 1870, have made the following rules with respect to applications for a prolongation of time for the commencement

or the completion of the works authorised by any order made under the above-named Act :—

1. The application should be in the form of a memorial setting forth the grounds on which the application is made, and must be made at least one month before the expiration of the time prescribed for the commencement or the completion of the works, as the case may be.

2. The promoters of any tramway undertaking authorised by any order, who intend to apply to the Board of Trade for a prolongation of the time limited for the commencement or the completion of the works authorised by such order, shall publish by advertisement, once at least in two successive weeks, in some one and the same newspaper circulating in the district affected by such order, a notice of their intention to apply to the Board of Trade for an extension of time.

3. The notice must state the period to which it is proposed to prolong the time limited for the commencement or the completion of the works, as the case may be, and must contain a notification that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the assistant secretary of the Railway Department of the Board of Trade, on or before a day to be named in the advertisement, being not less than twenty-one days from the date of the first publication of the advertisement, and that copies of their representations or objections are at the same time to be sent to the promoters.

4. A copy of this notice must be delivered to every local and road authority before the second publication of the notice. Copies of newspapers containing the notice, and a statement that a copy of it has been duly served on the local and road authorities as required by these rules, must be sent to the Board of Trade with the application.

5. Before the Board of Trade comply with the application, they will impose such conditions (if any) as they think fit.

HENRY G. CALCRAFT.

Board of Trade,
(Railway Department).

The following is taken from a provisional order confirmed in 1876 :

Order authorising The ——— Tramways Company, Limited, to construct tramways in the parishes of ——— and ———, in the county of ———.

Short title.

1. This order may be cited as “The ——— Tramways Order, 1876.”

Incorporation
of Acts.

2. The provisions of The Lands Clauses Acts (except with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry on lands by the promoters of the undertaking), and of The Tramways Act, 1870, are hereby incorporated with this order, except where the same are expressly varied by this order.

Interpreta-
tion.

3. The several words and expressions to which by the Acts

in whole or in part incorporated with this order meanings are assigned have in this order the same respective meanings.

Provided that the expression "the tramways" or "the undertaking" shall mean the tramways, works, and undertaking by this order authorised.

The expression "the corporation" shall mean the mayor, aldermen, and burgesses of the borough of —, whether acting as a local or a road authority.

PROMOTERS.

4. The — Company, Limited, shall be the promoters for the purposes of this order, and are in this order referred to as "the promoters." The Promoters.

5. The promoters may, by agreement, from time to time purchase and acquire or take on lease such land as may be necessary for the undertaking, not exceeding seven acres, and may also rent or take on lease such easements over lands, tenements, piers, or floating bridges, as may be necessary for the purposes of the undertaking. Land by agreement.

CONSTRUCTION OF TRAMWAYS.

6. The promoters may construct and maintain, subject to the provisions of this order, and in accordance with the plans and sections deposited for the purposes of this order (in this order referred to as "the deposited plans and sections"), the tramways hereinafter described, with all proper rails, plates, offices, weigh-bridges, stables, carriage-houses, warehouses, works, and conveniences connected therewith, or for the purposes thereof, and may work and use the same. Construction of tramways.

The tramways hereby authorised to be constructed and maintained are the following :—

A tramway (No. 1) situate wholly in the parish of Portsea, &c.

A tramway-siding or passing-place (No. 2), situate in — Road, &c.

[And so forth, specifying accurately the various tramways and passing-places authorised.]

7. Any tramway which may be laid in — Road under the authority of this order shall be so laid that there shall be a space of not less than nine feet six inches between the footpath and the rail of such tramway which is nearest thereto. Restrictions as to tramways :—

Conditions as to tramways laid in narrow places.

Wherever, except as herein otherwise provided, any of the roads along or upon which any tramway is authorised to be laid by this order are not of the width of 21 feet at least between the kerbs, the promoters shall before laying such tramway extend the width of such road, so that such road may be 21 feet at least between the kerbs, and in every such case the roadway on each side of the tramway shall be paved by the promoters in such manner as shall be approved of by the surveyor of the road authority.

Conditions as to roads raised.

Wherever for the purpose of laying the tramways according to the levels authorised by this order it becomes necessary to raise the level of any road, the promoters shall raise the road on either side of the tramways to the same level as the tramways.

Conditions where cab-stands are removed.

Wherever any cab-stand existing at the time of the passing of the Act confirming this order shall be interfered with or affected by the laying of any tramway and shall be required to be removed, the promoters shall at their own costs take up and reconstruct the same in such other position near thereto as the corporation shall determine, but with liberty to use the same materials so far as they shall be suitable for the purpose and be approved by the surveyor of the corporation.

Promoters may be required to use improved form of rails.

8. The Board of Trade may from time to time, upon the application of the road authority of any district, require the promoters to adopt and apply such improvements in any of the tramways within such district, including the rails thereof, as experience may from time to time suggest, having regard to the greater security of the public and advantage to the ordinary traffic; and the promoters shall, with all reasonable dispatch, comply with any order made by the Board of Trade for the purpose of carrying out any such improvements.

Penalty for not maintaining rails and road in good condition.

9. The promoters shall at all times maintain and keep in good condition and repair the rails of which any of the tramways shall for the time being consist, and if the promoters at any time fail to comply with this provision, or with any of the requirements of Section 28 of The Tramways Act, 1870, they shall be subject to a penalty not exceeding 5*l*. for every day on which such act of omission continues; and such penalty may be recovered as by Section 56 of the said Act is provided.

Tramways to

10. If any road authority shall hereafter alter the level of

any road along or across which any of the tramways is laid or authorised to be laid, the promoters may and shall from time to time alter or (as the case may be) lay their rails so that the uppermost surface thereof shall be on a level with the surface of the road as altered.

be always kept on a level with surface of road.

11. The promoters may from time to time hereafter make all such crossings, passing-places, sidings, junctions and other works, in addition to those particularly specified in and authorised by this order, as may from time to time be necessary or convenient to the efficient working of their tramways, or any of them, or for providing access to any stables or carriage-sheds or works of the promoters, subject to the approval of the road authority : Provided that in the construction of any such works no rail shall be so laid that a less space than 9 feet 6 inches shall intervene between the said rail and the outside of the footpath on either side of the road, if the owner or owners or occupier or occupiers of the premises abutting on the place where such rail is proposed to be laid shall, by writing under their hand, addressed to the promoters, express their objection thereto.

Additional crossings, passing-places, &c., may be made where necessary.

12. Where, by reason of the execution of any work affecting the surface or soil of any road along which any of the tramways are laid, it shall, in the opinion of the road authority, be necessary or expedient temporarily to remove or discontinue the use of any such tramway, or any part thereof, the promoters may, subject to such conditions, and in accordance in all respects with such regulations as the road authority may from time to time make, construct in the same or any adjacent road, and, with the like consent, subject to the like conditions, and in accordance with the like regulations, maintain, so long as occasion may require, a temporary tramway or temporary tramways in lieu of the tramway or part of a tramway so removed or discontinued.

Temporary tramways may be made when necessary.

If any difference arises between the promoters and any road authority with respect to the reasonableness of any regulations, or with respect to the mode of constructing any temporary tramway or tramways under the authority of this section, the same shall be settled in the manner specified in Section 33 of The Tramways Act, 1870, for the settlement of differences in the said section mentioned.

13. Any paving, metalling, or material excavated by the Application of

road materials
excavated in
construction
of works.

promoters in the construction of their works from any road under the jurisdiction or control of any road authority may be applied by the promoters, so far as may be necessary, in or towards the reinstating of the road, and the maintenance for six months after completion of any of the tramways within the district of such road authority of so much of the roadway on either side of such tramways as the promoters are by this order required to maintain; and the promoters shall, if so required, deliver the surplus paving, metalling, or material not used or required to be retained for the purposes aforesaid to the surveyor for the time being of the road authority or to such person or persons as he may appoint to receive the same: provided, that if within seven days after the excavation of any such paving, metalling, or material the surplus thereof as aforesaid is not removed by the said surveyor, or by some other person or persons named by him for that purpose, such surplus paving, metalling, or material shall absolutely vest in and belong to the promoters, and may be dealt with, removed, and disposed of by them in such manner as they may think fit. Any difference between the promoters and any road authority or surveyor or other person, with reference to any of the matters aforesaid, shall be determined in manner provided by The Tramways Act, 1870, with respect to all differences between the promoters and any road authority.

TRAFFIC UPON TRAMWAYS.

Traffic.

14. The tramways may be used for the purpose of carrying passengers, luggage, parcels, and mail bags.

TOLLS.

Tolls for
passengers.

16. The promoters may demand and take for every passenger travelling upon any of the tramways, including tolls for the use of the tramways and the carriages, and for motive power and every other expense incidental to such conveyance, any rates or charges not exceeding twopence per mile (and for this purpose the fraction of a mile beyond an integral number of miles shall be deemed a mile): provided always, that if at any time after three years from the opening for public traffic of any of the tramways hereby authorised, it shall be represented in writing to the Board of Trade by the corporation

that the promoters are charging a greater sum than is reasonable, the Board of Trade may, if they think fit, direct an inquiry by a referee to be appointed by the said board in accordance with the provisions of The Tramways Act, 1870 ; and if such referee report that the truth of such representation has been proved to his satisfaction, the Board of Trade may make an order in writing limiting the amount of the rates and fares to be thenceforth charged by the promoters for the conveyance of passengers for distances not exceeding two miles to twopence ; and the promoters shall thenceforth conform to and abide by such order : provided always, that the Board of Trade may from time to time, after making such order, revoke or modify the same for good cause shown to them.

17. Every passenger travelling upon the tramways may take with him his personal luggage, not exceeding 28 pounds in weight, without any charge being made for the carriage thereof.

Passengers' luggage.

18. The promoters, at all times after the opening of the tramways or any part or parts thereof for public traffic, shall and they are hereby required to run carriages each way every morning in the week and every evening in the week (Sundays, Christmas Day, and Good Friday always excepted), at such hours, not being later than seven in the morning or earlier than six in the evening respectively, as the promoters think most convenient for artisans, mechanics, and daily labourers, at tolls or charges not exceeding one halfpenny per mile (the promoters, nevertheless, not being required to take any fares less than one penny) : Provided that in case of any complaint made to the Board of Trade of the hours appointed by the promoters for the running of such carriages, the said board shall have power to fix and regulate the same from time to time.

Cheap fares for labouring classes.

19. The promoters may demand and take in respect of any parcels and luggage other than passengers' luggage (not exceeding 28 pounds in weight) conveyed by them on the tramways, including the tolls for the use of the tramways, and for waggon, trucks, and motive power, and every other expense incidental to the conveyance, any tolls or charges not exceeding the rates specified in the Schedule to this order annexed.

Tolls for parcels, &c.

20. The tolls and charges by this order authorised shall be paid to such persons and at such places upon or near to the

Payment of tolls.

tramways, and in such manner and under such regulations, as the promoters may by notice to be annexed to the list of tolls appoint.

Promoters
not bound to
carry parcels
or luggage.

21. The promoters shall not be bound to carry, unless they think fit, any parcels or luggage other than passengers' luggage not exceeding 28 pounds in weight.

MISCELLANEOUS.

Provisions as
to arbitration.

22. Where, under the provisions of The Tramways Act, 1870, in this order any matter in difference is referred to the arbitration of any person nominated by the Board of Trade, the provisions of The Common Law Procedure Act, 1854, shall apply to every such arbitration, and the decision of the arbitrator shall be final and conclusive and binding on all parties.

Agreements
between pro-
motors and
road autho-
rity.

23. The promoters and the road authority are hereby authorised to enter into any agreements with respect to the construction, maintaining, removing, renewing, repairing, working, and using of the tramways situated within the district of such road authority and the works connected therewith, and the facilitating of the traffic over the same by means of animal power, and also with respect to the repairing and maintaining all or any of the streets, roads, and places upon which the tramways or any of them may be laid within such district, and to the providing for the expense of such repairs.

Form and
delivery of
notices.

24. With respect to notices and the delivery thereof by or to the promoters, the following provisions shall have effect, namely :—

- (1.) Every notice shall be in writing or print, or partly in writing and partly in print, and if given by the corporation shall be sufficiently authenticated by being signed by the town clerk for the time being.
- (2.) Any notice to be delivered by or to the promoters to or by the corporation, or to or by any other body, or to or by any company, may be delivered by being left at the town hall or principal office of such body or company, or at the principal office of the promoters, as the case may be, or by being sent by post in a registered letter addressed to the town clerk at the town hall or to the clerk or secretary of such body, company, or of the promoters at their principal office.

25. Nothing in this order contained shall be deemed or construed to exempt the tramways from the provisions of any general Act relating to tramways now in force, or which may hereafter pass during this or any future session of Parliament.

Order to be
subject to
general Acts.

SCHEDULE.

LIST OF TOLLS.

For parcels and luggage not exceeding					
in the aggregate		.	.	.	7 lbs. in weight, 2 <i>d</i> .
"	"	"	"	14	" " 3 <i>d</i> .
"	"	"	"	28	" " 4 <i>d</i> .
"	"	"	"	56	" " 5 <i>d</i> .
"	"	"	"	84	" " 6 <i>d</i> .
"	"	"	"	112	" " 8 <i>d</i> .

And for all parcels or luggage exceeding in the aggregate 112 pounds in weight, the promoters may demand and take any sum they think fit.

For objects clause of memorandum of association suitable for such a company as that referred to in the above order, see *supra*, p. 123. The articles of association, *supra*, p. 158, can readily be adapted to such a company.

DEBENTURES.

INTRODUCTORY NOTES.

COMPANIES formed under the Act of 1862 very commonly issue debentures : Issue of debentures common.

1. For the purpose of securing the repayment of money borrowed.

2. In payment for property purchased, or services rendered, or money due.

Formerly a debenture was generally framed as a covenant by the company with the person to whom it was issued to pay to him, his executors, administrators, or assigns, the principal money therein mentioned with interest, and was expressed to be given under the common seal. As to debenture operating as a covenant.

The right to sue for the recovery of money secured by an instrument so framed, being a chose in action, was only assignable subject to the rules which prevailed as to the assignment of a chose in action, *e. g.* :— Chose in action.

- (a) It was only assignable subject to the equities subsisting between the company and the person to whom the debenture was issued. Hence before taking an assignment the intending assignee was obliged to make inquiries of the company, whether the debenture was valid and in full force, or whether the company claimed to set up any equities.
- (b) The assignee could only sue in the name of the assignor.
- (c) The assignee was obliged to give notice of the assignment to the company, because where two or more persons claim to be assignees of the same chose in action they are, as between themselves, entitled to priority in the order of time at which they respectively give notice of their claims to the debtor.
- (d) The holder of such an instrument could not give a better title to his assignee than he himself possessed. Thus if a debenture was stolen or lost, and was subsequently assigned to a *bonâ fide* purchaser without

notice of the theft or loss, the assignee did not acquire any title to the monies thereby secured as against the real owner. Hence a purchaser could not safely take an assignment without investigating the title of the vendor, nor could the company prudently pay the holder without requiring him to show his title.

Objections to such instruments.

But instruments so circumstanced were obviously not capable of being readily and safely dealt with. However good the credit of the company issuing them might be, dealings could not safely take place without investigation of title, inquiries, assignments, notices, and legal advice.

Endeavours to render debentures negotiable.

There were, however, some choses in action, and in particular negotiable instruments, which were free from the inconvenient rules above referred to ; and, accordingly, with a view to improving the marketable quality of debentures, and in order to facilitate dealings therewith, many companies have of late years been endeavouring so to frame the debentures issued by them that they shall be negotiable, or, at any rate, possessed of *some* of the characteristics of a negotiable instrument.

Characteristics of negotiable instrument.

The following are the most important characteristics of a negotiable instrument, *e.g.*, a promissory note to bearer :—

1. A purchaser to whom it is delivered (before it becomes due) takes it free from equities between the person to whom it was originally issued and the maker.

2. No assignment in writing is necessary, for the contract is annexed to the instrument the delivery of which passes the right to sue.

3. The holder of the instrument can sue in his own name.

4. The delivery of the instrument constitutes a perfect and complete transfer of the contract without giving notice to the debtor, *i.e.*, to the maker.

5. Any person who takes the instrument *bonâ fide* and for a valuable consideration, acquires a good title, even though the person transferring it to him have no title, *e.g.*, have stolen it or found it.

Convenience of.

Such an instrument is in fact as easily and safely dealt with as cash ; an investor has no need to make any inquiries, or to give any notices, or procure any assignment to be executed, for the delivery of the instrument gives him a valid and complete title. Hence it is not surprising that companies should desire to render their debentures negotiable.

Some debentures can certainly be so framed that they will be negotiable instruments. For there can be no doubt that an instrument which contains an absolute promise by a company to pay a sum of money at a time therein specified to a person therein named or to his order or to the bearer will, provided that it is stamped as a promissory note, and instead of being "given under the common seal," is signed on behalf of the company by some duly authorised agent, be held to be a promissory note. The fact that it is called a debenture will not prevent the Court from holding it a promissory note. *Ex parte Colborne & Strawbridge*, 11 Eq. 478; and see *infra*, *Ex parte City Bank*, 3 Ch. 758.

What debentures can take effect as promissory notes.

For form of debenture intended to operate as a promissory note, see *infra*, Form 1.

There seems no reason why in a simple case where it is desired to issue negotiable debentures the form above referred to should not be adopted. As to whether it may not be expedient to affix the seal to such an instrument, and as to the effect of so doing, see *infra*, notes to Form 1.

It will be observed that the form of debenture (Form 1) above referred to, purports to be signed by two directors "for the company." The reason why it is so signed instead of purporting to be "given under the seal" of the company, is to avoid any question as to whether a promissory note can be made under seal. This is a matter of considerable doubt. Thus:—

As to signing debenture for company.

It has been laid down that: "At common law bills of exchange and promissory notes, being simple contracts, cannot be under seal, at least so as to retain their negotiable properties." *Byles* on Bills of Exchange, 11th ed. p. 68, n. f.

Whether company can make promissory note under its seal. *Byles* on Bills.

On the other hand in the *General Estate Co., Ex parte City Bank*, 3 Ch. 762, a debenture had been issued in form of an undertaking by the company "to pay to the order of J. C. Hodges." It was expressed to be "given under the common seal." Page-Wood, L. J., said, "The better opinion seems to me to be that this is a promissory note . . ." "It is under seal, but so in the absence of special powers must every instrument be which is executed by a corporation." So too *In re Imperial Land Co. of Marseilles; ex parte Colborne & Strawbridge*, 11 Eq. 478. Malins, V.-C., said, in reference to a debenture "given under seal," which was in the form of a

Lord Hatherley's opinion.

Vice-Chancellor Malins' opinion.

declaration that the company "hereby bind themselves and their successors to pay to the bearer," "that is in my opinion a promissory note, and not less so because it is called a debenture."

But in neither of those cases was it necessary to decide the point.

In further support of this view the following passage may be cited. It occurs in *Arnold on Marine Insurance*, 4th ed., p. 141 (1871):—"In a recent case, not reported, in which a title for a new trial or to enter a verdict for the defendants was obtained on several grounds, and among these on this, that the declaration purported to be on a single contract, whereas the policy was made under seal: when cause came to be shown on that point, Blackburn, J., inquired whether the seal in that case was of any other legal effect than merely the form proper to the company? Counsel for the plaintiff thereupon desisted from arguing the point, and it was not further pressed by the defendants: *Esper v. English and Scottish Marine Insurance Company*, *decree* Queen's Bench."

Lord Blackburn's
opinion.

However, in the case of *Church v. Credit Foncier of England*, L. R. & Q. B. 342 (1873), one of the questions for decision was, whether a debenture issued by the Credit Foncier, under its seal and purporting to be a promise to pay 100*l.* to the bearer, with certain provisions as to drawings, was a promissory note. The judgment of the Court was delivered by Blackburn, J., and contained the following passage:—"The negotiability of promissory notes depends, in part at least, upon the statute 3 & 4 Anne, c. 9; and it seems to have been the opinion of Lord Justice Wood, *In re General Estates Co.* [*ubi supra*, p. 387], and of Malins, V.-C., *in re Imperial Land Co. of Marseilles* [*ubi supra*, p. 387], that inasmuch as that Act enacts that promissory notes in writing, 'made and signed by any person or persons, body politic or corporate, or by the agent or servant of any corporation, banker, goldsmith, merchant, or trader, who is usually intrusted by him, her, or them, to sign such promissory notes for him, her, or them, whereby such person or persons, body politic or corporate, his, her, or their servant or agent, doth promise to pay any sum of money, shall be indorsable, as bills of exchange are, by custom of merchants,' it follows that a corporation fixing its seal to a written promise to pay must be considered as *signing* the

promise, not covenanting under seal to fulfil it; and so, that the statute by implication enacts that what would at common law be their covenant to pay is their promise to pay. But, although intimating their opinion, neither of the learned persons referred to gave any decision on the point, as it was not necessary for the purpose of the cases before them. In *Slack v. Highgate Archway Co.* [5 Taunton, 792] a similar point was raised, but not decided. There, however, the Act authorised the making of notes under the seal of the corporation. Neither is it necessary for us to decide the point as, for reasons which will be presently given, the instrument in question, even if under hand, could not be a promissory note; but we wish to point out that in *Glyn v. Baker* [13 East, 509] the form of the East India bond was that the East India Company acknowledged to have received of W. G. Sibley 100*l.*, which the company promised to repay to Sibley, his executors, or assigns by indorsement. It was, therefore, in form a promissory note for value received, payable to order, and, had it been signed as such by an agent of the East India Company, would have been negotiable. But it was a bond under the seal of the East India Company, and Le Blanc, J., says—‘It is clear that no action could have been brought on this bond but by Sibley the obligee, or in his name; or if he died, in the name of his executors.’ The alarm occasioned by this decision was so great that within a month afterwards an Act (51 Geo. 3, c. 64) was passed to make East India bonds negotiable like promissory notes. It seems not to have occurred to any one that it could be said that this was already done by virtue of the statute of Anne, the promise in writing being signed by the East India Company’s seal. This seems a strong authority for saying that instruments under the seal of a body corporate are not exceptions from the general rule laid down in *Byles on Bills* . . . [*supra*, p. 387] . . . but it is not necessary to decide in the present case whether an instrument under the seal of a corporation can be a promissory note; for the contract of the Credit Foncier is not merely to pay the money, but also to cause a portion of the bonds to be drawn in the stipulated manner; and any one entitled to sue on the contract contained in this instrument would be entitled to sue for damages, if the company did not fairly give him his chance of having his bond drawn according to the stipulated con-

ditions, and it is obvious that such a contract as that cannot be a promissory note."

Enthoven v. Hoyle.

Moreover, in *Enthoven v. Hoyle*, 21 L. J., N. S., C. P., 100; 16 Jur. 272; 13 C. B. 373, a debenture payable "to [] or order" and expressed to be given "under the common seal" of a corporation was, though stamped as a promissory note, held or assumed by the Court of Exchequer Chamber [Parke, Alderson, Platt, and Martin, B.B., Paterson and Wightman, J.J.], to be a deed, and having a blank in it, to be wholly inoperative. See also *supra*, p. 18, *et seq.*

Practical application of cases.

Sufficient has been said to show that if a debenture is intended to operate as a promissory note, it is expedient, instead of making it under seal, to make it under the hand of some person duly authorised on behalf of the company. By this means it will certainly operate as a promissory note, whereas if it is "given under the seal" it is impossible to say, in the present state of the law, whether it would be held a covenant or a promissory note.

If it should hereafter be held that a promissory note can be made under the seal of a company, there will no longer be any object in procuring debentures intended to operate as promissory notes, to be signed "for" the company issuing them: it will be sufficient to affix the seal as in Form 3, *infra*, p. 428.

As to debentures which cannot be promissory notes.

But debentures are very commonly issued containing provisions for redemption or promises to pay on contingencies or out of particular funds, which prevent them, even if under hand, and duly stamped, from operating as promissory notes. See Byles on Bills of Exchange, 11th ed., Ch. VII., Irregular instruments. See also *Crouch v. Credit Foncier of England*, *supra*, p. 389.

What characteristics of negotiable instrument can be annexed.

And we shall therefore now proceed to consider how far a debenture under seal, which cannot or is not intended to be a promissory note, can be endowed with the characteristics of a negotiable instrument.

Can be made assignable free from equities.

1. A debenture may unquestionably be made transferable free from equities subsisting between the company and the original or any intermediate holder. This may be effected (*a*) by the insertion of an express stipulation in the debenture, or by so framing it (*b*) that such a stipulation will be implied, or (*c*) that the company will be estopped from setting up such equities.

As to (*a*)—"I am of opinion that there is nothing inequi-

table in allowing the debtor in an obligation to contract with his creditor that he will not avail himself of such equities." *Per* Rolt, L. J., *In re Blakely Ordnance Co.*, 3 Ch. 159.

As to (b)—“generally speaking, a chose in action assignable only in equity must be assigned subject to the equities existing between the original parties to the contract; but this is a rule which must yield when it appears from the nature or terms of the contract that it must have been intended to be assignable free from and unaffected by such equities,” *per* Cairns, L. J., *In re Agra and Masterman's Bank, ex parte Asiatic Banking Corporation*, 2 Ch. 397.

And it appears that such an intention will probably be implied from the mere fact that the debenture is “to bearer.” Thus in *re Blakely Ordnance Co.*, *ubi supra*, the debentures were in the form of a covenant to pay “to Blakely and Dent, their executors, administrators, or assigns, or to the bearer hereof.” They were issued pursuant to an agreement of June, 1865, embodied in the articles of association, by which the company was to issue debentures “payable to bearer.” They did not contain any express declaration that they should be assignable free from equities. Rolt, L. J., said: “There can be no doubt, I think, as to the construction of the debentures. They are payable to bearer, and the object and intention of the parties was, no doubt, to give to any person taking them the right of resorting for payment directly to the obligors without regard to any equities that might exist between them and the original obligees. The parties to the agreement of June, 1865, intended, and have sufficiently, in my opinion, expressed their intention, that this should be so.” In this case it will be observed that the Lord Justice relied to some extent on the antecedent agreement that the debentures should be “to bearer.” Had the debentures been “to bearer” simply there can be little doubt that it would have been unnecessary to resort to this agreement. For if an agreement to issue debentures “payable to bearer” clearly implies that they are to be assignable free from equities, the actual issue of debentures purporting to be payable “to bearer” must, it would seem, give rise to the same implication. But the debentures in the above case were not to bearer simply. They purported to be payable to Blakely and Dent, “*their executors, administrators, or assigns, or to the bearer hereof;*” and the words in

What sufficient evidence of intention.
Blakely Ordnance Co.

italics, being those usually adopted in framing a covenant, tended to negative the implication which would have arisen from the use of the words "to bearer" alone.

Natal Investment Co.

This it was which caused the difficulty in the case of *In re Natal Investment Company*, 3 Ch. 361. The debenture there was in the form of an undertaking "to pay unto the said A. Coqui, or his executors, administrators, or transferees, or to the holder for the time being of this debenture bond." Lord Cairns, L. C., after referring to the case of *In re Blakely Ordnance Company*, *ubi supra*, said: "That was a case, therefore, depending on the special circumstances of the antecedent contract, to which I have already referred. In the present case there is no contract for debentures in any particular form. . . . Taking, therefore, the construction of the debenture as that which must be determined upon the face of it, and without any antecedent contract leading up to a debenture in any particular form, we find that the debenture is constructed in this way. It proceeds upon a recital of a debt due from the company to Coqui. The object of the debenture, on the face of it, is to secure to Coqui this debt. The covenant is with him. The payment is to be made to him, or his executors, administrators, or transferees. Stopping at that point the word 'transferee' would obviously be simply equivalent to 'assigns,' and 'assigns' would mean, according to ordinary construction of such an instrument, an assign by deed—an assign in any way in which an assignee of a bond, or other chose in action of the same kind, is created. The executors and the administrators would be subject, if the claim for payment were made by them, to any equities which might exist against Coqui himself. So also, assignees or assigns by deed would be subject to the same equities. There is nothing, therefore, in the debenture up to that point which would negative the usual rule of equity, that the assignee must take subject to all equities between the original parties to the contract. We then find added these words, after the word 'transferees,' 'or to the holder for the time being of this debenture.' As I understand these words, they do nothing more than this: in order to save the trouble and expense of assignment by deed, they provide that the company will recognise any person who holds the debenture to be in as good a position as if he had become the assign by deed, and will

not insist upon his proving his title by formal assignment ; but there is nothing whatever in these words which, as it seems to me, is intended to put the holder for the time being in a better position than an assign by deed. It would be in the highest degree unreasonable to suppose that an assign by the most formal mode of assignment would take subject to the equities as against Coqui, whereas an assign, not by deed, but merely by manual transfer of the document, would take free from those equities." Accordingly his lordship held that the holder of the debenture could only prove in the winding up of the company subject to the equities of the company against Coqui.

It will be observed that in this case Lord Cairns relied on the presence of the words "executors, administrators, or transferees" [= assigns], as being the ordinary form of a covenant, and considered that the subsequent words did not control or alter the character of the instrument, so as to evidence an intention that it should be transferable free from equities. In fact, according to his lordship's view, the presence of the words "executors, administrators, or transferees," neutralised the effect which the words "to the holder for the time being of this debenture" would otherwise have had.

From what has been said it appears that the fact that a debenture is "to bearer" simply is probably sufficient evidence that the parties intend it to be assignable free from equities, and that it is inexpedient to insert the words "executors, administrators, or assigns," unless indeed the debenture is to contain an express proviso that it is to be assignable free from equities ; and even in that case they are surplusage.

As to (c)—In the case of *In re Imperial Land Co. of Mar-seilles, ex parte Colborne and Strawbridge*, 11 Eq. 487, the debentures were in the form of a declaration or representation that the company "hereby bind themselves and their successors to pay to the bearer." They did not contain any express stipulation as to equities. Malins, V.-C., held that the holder could prove in the winding up of the company free from equities subsisting between the company and the person to whom they were originally issued. His Honour's judgment contained the following passages : "Are they then promissory notes or debentures ? or does it make any difference which they are in the result ? My opinion is that, whichever they

Observations
on case.

When com-
pany estopped
from setting
up equities.

are, the result is the same, because they in any case make a contract by which the company have bound themselves to pay not to any particular person, but to any person who may be the bearer, the sum appearing to be due upon their face. . . . But suppose the instrument not to be a promissory note, but a bond or debenture, or anything else, it is equally binding on the company because it is a representation by the company to all the world, that they will, at the expiration of six years, pay the sum for which it is given to the holder, together with interest half yearly in the meantime. And it would be contrary to principle, and fatal to the existence of such instruments in this and all other companies, if in the hands of every person taking them they were subject to the equities between the company and the original holder . . . ”

So too in the case of the *General Estates Co.*, 3 Ch. 762, Page-Wood, L. J., said that “the authorities go to this, that where there is a distinct promise held out by a company, informing all the world that they will pay to the order of the person named [and of course equally so if “to bearer”], it is not competent for that company afterwards to set up equities of their own and say that because the person who makes the order is indebted to them they will not pay.”

Estoppel.
Pickard v.
Sears, &c.

The principle on which these cases were decided is well settled, viz., that a person making a representation with the intention that it shall be acted upon is estopped from denying its truth as against any person acting on it. The leading cases in point are *Pickard v. Sears*, 6 Adol. & El. 469; *Freeman v. Cooke*, 2 Ex. 654; 18 L. J. Ex. 114; *In re Bahia & San Francisco Ry. Co.*, L. R. 3 Q. B. 594; *Webb v. Herne Bay Coms.*, L. R. 5 Q. B. 642; *In re Agra & Masterman's Bank*, 2 Ch. 396.

When the debenture is expressed thus, “the company promise to pay to the bearer, &c.,” there is of course some difficulty in treating it as a representation. See *Farmloe v. Bain*, 1 C. P. Div. 445. But if, instead of being so framed, the debenture is in the form of a statement that “the company will pay to the bearer,” it is obviously a representation, and there ought to be no difficulty in giving full effect thereto.

Goodwin v.
Roberts.

Thus in the recent case of *Goodwin v. Roberts*, 1 App. Cas. 476, scrip of a Russian loan had been purchased by the plaintiff and left in the hands of his broker, who had wrongfully

pledged the same to the defendants. The defendants had sold it, and the plaintiff brought his action for the proceeds. The scrip was, so far as material, as follows: "Received the sum of 20*l.*, being the first instalment of 20 per cent. upon 100*l.* stock, and on payment of the remaining instalments the bearer will be entitled to receive a definitive bond for 100*l.*" The defence was that the scrip was negotiable by mercantile usage and that the defendants had taken it *bonâ fide* for valuable consideration. Judgment was given for the defendant by the Exchequer Chamber, L. R. 10 Ex. 337 (affirming the judgment of the Court of Exchequer), on the ground that the scrip had in fact become negotiable by mercantile usage and custom, and the House of Lords affirmed this decision. Lord Cairns's judgment in the House of Lords contained the following passage: "The question argued in the courts below was the negotiability of the scrip of a foreign loan, like that in the present case; but there appears to me to be a prior consideration as to the title of the plaintiff which would alone be sufficient to dispose of his claim. The plaintiff bought in the market scrip which, from the form in which it was prepared, virtually represented that the paper would pass from hand to hand by delivery only, and that any one who became *bonâ fide* the holder might claim for his own benefit the fulfilment of its terms from the foreign government. The appellant might have kept this scrip in his own possession, and if he had done so, no question like the present could have arisen. He preferred, however, to place it in the possession, and under the control, of his broker or agent, and although it is stated that it remained in the agent's hands for disposal or to be exchanged for bonds when issued, as the appellant should direct, those into whose hands the scrip would come would know nothing of the title of the appellant, or of any private instructions he might have given to his agent. The scrip itself would be a representation to any one taking it—a representation which the appellant must be taken to have made, or to have been a party to—that, if this scrip were taken in good faith, and for value, the person taking it would stand to all intents and purposes in the place of the previous holder. Let it be assumed for the moment that the instrument was not negotiable, that no right of action was transferred by the delivery; and that no legal claim could be made by the taker

Judgment of
Lord Cairns.

in his own name against the foreign government ; still the appellant is in the position of a person who had made a representation in the face of his scrip, that it would pass with a good title to any one taking it in good faith and for value, and who had put it in the power of his agent to hand over the scrip with this representation to those who are induced to alter their position on the faith of the representations so made. My Lords, I am of opinion that, on doctrines well established, of which *Pickard v. Sears* [6 Ad. & E. 469, p. 474] might be taken as an example, the appellant cannot be allowed to defeat the title which the respondents have thus acquired”

Company
bound by
representa-
tion.

The same construction appears to be applicable to a debenture which states that “The company will pay to the bearer, &c.” Of such an instrument it may equally be said that it “virtually represents that the paper will pass from hand to hand by delivery, and that any one who becomes *bonâ fide* the holder will be entitled to claim for his own benefit the fulfilment of its terms from the” [company].

If the bearer of such an instrument can be, as in Lord Cairns's opinion he ought in some cases to be, treated as having adopted, and being bound by this representation, *à fortiori* the representation is binding on the company, and if so the company is at any rate estopped from setting up as against the bearer any equities between it and the person to whom the debenture was issued. See *Agra, &c., Bank*, 2 Ch. 595.

2. A debenture may be so framed that the bearer will become entitled to payment of the monies secured thereby without any assignment in writing.

Debenture
may be made
assignable
without
transfer in
writing.

This may be effected (*a*) by express stipulation inserted in the debenture, but this is never done ; or by so framing the debenture (*b*) that the stipulation will be implied, or (*c*) that the company will be bound by estoppel to pay to the bearer.

As to (*a*)—

“I am of opinion that there is nothing inequitable in allowing the debtor, in an obligation, to contract with his creditor that he will pay the amount due on the obligation to the assignee of the creditor (whether he be such assignee by instrument in writing, or by mere delivery of the obligation)” *Per Rolt, L.J., In re Blakely Ordnance Co.*, 3 Ch. 159.

As to (b)—

In the case *In re Natal Investment Co. (ubi supra)*, Lord Cairns said, "As I understand these words ['or to the holder, for the time being, of this debenture'], they do nothing more than this: in order to save the trouble and expense of assignments by deed, they provide that the company will recognise any person who holds the debenture to be in as good a position as if he had become the assignee by deed, and will not insist upon his proving his title by producing a formal assignment, &c."

There appears to be no difference, in substance, between the words referred to by Lord Cairns and the following: "the bearer, for the time being, of this debenture"; or "the bearer hereof"; or "the bearer"; and it seems to follow that the bearer of a debenture, issued "to bearer," will stand in the same position as if the stipulation were expressly inserted.

As to (c)—

If a debenture is in the form of a representation that "the company will pay to the bearer," the company would appear to be bound, upon the principles stated above (p. 394), to make good this representation, and pay the bearer, without requiring him to show his title. See, in particular, *In re Agra, &c., Bank*, 2 Ch. 595.

3. A debenture may be so framed that the receipt of the bearer will be a good discharge to the company for the monies secured thereby.

It may be so framed that receipt of bearer good discharge to company.

This may be effected by the insertion of an express stipulation in the debenture, or by so framing it that such a stipulation will be implied.

Thus in *Crouch v. Credit Foncier of England*, L. R. 8 Q. B. 385, the Court said: "If Macken [from whom a debenture, in the form of a 'promise to pay the bearer,' had been stolen] had sued them [*i.e.* the company], a plea that they had paid the money to the bearer, without notice that he was not entitled to it, would be good, if, on the true construction of the instrument, it is stipulated that the receipt of the bearer giving up the instrument shall be a sufficient discharge for the company; for they were quite competent to stipulate to that effect."

This goes to show not only that such a stipulation is lawful, but that it will be effectual if expressed or capable of being implied, and that the mere fact, that a debenture is "to bearer," is perhaps sufficient to imply it.

It will be borne in mind that such a stipulation "is not a proviso for the benefit of either the assignee or the holder of the debenture ; it is a proviso for the benefit of the company itself, in order to absolve the company from the burden of having to look into the title of any person who might present the debenture to them for payment. It does not oblige them to pay to any person who presents the debenture, it merely absolves them from subsequent liability if they do, in point of fact, pay to a person who presents the debenture." *Per Lord Cairns. L.C., In re Natal Investment Co., 3 Ch. 361.*

How far receipt clause protects company.

And it would seem effectually to protect the company in all cases, not only where the person to whom payment is made has a good, but where he has a defective title (*e.g.*, has stolen the debenture or derived one through a thief), provided, of course, that the company has not notice of the defect in his title.

This, of course, is a matter of great importance to a company issuing debentures to bearer, for it would be impossible in all cases to require the bearer to prove his title ; yet, if the above stipulation is not effectual *in all cases*, nothing short of this would protect the company from the liability of having to pay twice over if it paid to a person having a defective title.

That where the company pays, without notice, to a person having a defective title the stipulation protects it against any claim by the person to whom the debenture was originally issued, is quite clear. *Crouch v. Credit Foncier, supra*, p. 397.

The only question is whether it protects the company in such cases against the claims of every intermediate holder. Thus let it be supposed that a debenture to bearer, containing an express stipulation that the receipt of the bearer shall be a good discharge to the company, is issued to A., who sells it to B., that it is stolen from B., and that the company pays the thief without notice of his defect in title. Could B. successfully sue the company on the debenture ? It is submitted that he could not, for the company would be entitled to rely on the well-established principle that a man cannot at once claim the benefit of a contract and repudiate one of the terms of it. *Qui sentit commodum sentire debet et onus*. The case of *Macdonald v. Law Union Insurance Co.*, L. R. 9 Q. B. 328, affords a recent illustration of the principle.

Receipt of

The proviso, as to the receipt of the bearer being a good

discharge to the company, is generally extended so as to apply also to the receipt of the bearer of any of the coupons for interest, and it would appear to be effectual. For the coupon contains no contract ; it is a mere token. *Enthoven v. Hoyle*, 13 C. B. 373. If the company pays to the bearer of a coupon who has a defective title, and the real owner sues the company for the interest represented by the coupon, he must sue on the contract contained in the debenture, and if so, he must give effect to the proviso. Of course, if the coupons are so framed as to be independent promissory notes to bearer, no receipt clause as to them is necessary, for being negotiable, the holder can by law give a good discharge. See *supra*, p. 386.

bearer of coupon.

4. Where a debenture is in the form of a representation that the company will pay "to the bearer," it would seem that the transferee of the debenture need not give notice of the transfer to the company in order to perfect his title against other assignees, for by acting on the representation he acquires an independent, legal right against the company. See the cases cited *supra*, p. 394.

Whether transferee of debenture to bearer ought to give notice to company.

Moreover the assignee of a debenture to bearer, who left the instrument in the hands of his transferor, would no doubt be postponed to a subsequent transferee. See *Goodwin v. Roberts*, *supra*, p. 395.

5. It would, of course, be very desirable, if possible, so to frame a debenture that any person taking it *bond fide*, and for value, would acquire a good title thereto, notwithstanding a defect of title in the person from whom he takes it.

Whether debenture can be so framed that purchaser will acquire good title from a vendor having no title.

This is one of the most important incidents of a negotiable instrument. It much promotes facility of transfer, for it relieves a purchaser from the necessity of inquiring into the title of his vendor, and though the title of the latter be defective the title of the purchaser cannot be subsequently impeached, provided that he gives valuable consideration for the instrument, and has not notice of the defect of title. But it appears that it is impossible by express stipulation to annex this incident to a debenture.

Thus in *Crouch v. Credit Foncier of England*, L. R. 8 Q. B. 375, the Court said that the plaintiff was obliged to contend that the Credit Foncier had power to declare that those who might become holders of the instrument "should, contrary to the general rule of law, hold their property on a precarious

title liable to be divested if a thief or finder could find a *bond fide* purchaser for the debentures. No authority has been cited to show that it is within the competency of private persons by their contract to attach such an incident to any property." The Court thought it "beyond the competency of the parties by express stipulation to deprive the assignee of either the contract or the property represented by it, or of his right to take back his property from any one to whom a thief may have transferred it, even though that transferee took it *bond fide* and for value."

Of course, if an express stipulation would not be effectual, neither would an implied one.

Effect of representation in debenture that it will pass by delivery.

Nevertheless it would seem that a debenture, which can be treated as a representation that the company will pay to the bearer, possesses this valuable incident of a negotiable instrument to a limited extent, for if the owner of such an instrument entrusts it to some other person, who wrongfully sells it, the purchaser will acquire a good title as against the real owner. See *supra*, p. 395.

Whether bearer can be enabled to sue company in his own name.

6. It would also be very desirable so to frame a debenture that the bearer would be entitled to sue the company upon it in his own name. The incident cannot be annexed by express stipulation to a contract contained in an instrument which is not legally negotiable. "We have already intimated our opinion that it is beyond the competency of the parties to a contract, by express words, to confer on the assignee of that contract a right to sue in his own name." *Crouch v. The Credit Foncier*, L. R. 8 Q. B. 387. Nor can this incident be annexed by implication. *Ibid.* However, it would seem that upon the principles laid down in *Pickard v. Sears* and *In re Agra, &c., Bank*, *supra*, p. 394, the holder of a debenture, framed as a representation that the company will pay to the bearer, will be entitled to sue in his own name.

Estoppel.

Effect of Judicature Act.

Moreover, there is another ground upon which it may be held that the holder of a debenture, whether purporting to be payable to bearer or not, can sue in his own name, namely, upon the ground that he is equitable assignee of the monies thereby secured.

Before the Judicature Act, 1873, came into operation the assignee of a legal chose in action had, at law, to sue in the name of the person with whom the contract was made ; but this

rule had become "purely technical:" *Per* Blackburn, J., *Rule at law. Crouch v. Credit Foncier*, L. R. 8 Q. B. 380; Dicey, *Parties to Actions*, 71.

There was no such rule in the Court of Chancery; there the assignee could sue in his own name. *In equity.*

Nevertheless it was well settled that the Court would not entertain a suit for the recovery of a legal chose in action, unless there were special circumstances; and the plaintiff was therefore, in most cases, obliged to sue at law. Thus, in the case of *Hammond v. Messenger*, 9 Simon, 332, the plaintiff was suing in equity for payment of a debt due from the defendant Messenger to the defendants Wilks and Wooller and assigned to the plaintiff. It was held, on demurrer, that the assignee of a debt could not sue for it in a court of equity, unless the assignor refused to allow the assignee to sue for it, at law, in his name, or had done or intended to do some act which would prevent the assignee from recovering it at law in the assignor's name: liberty to amend, however, was given. The Vice-Chancellor said: "If bills of this kind were allowable, it is obvious that they would be pretty frequent; but I never remember any instance of such a bill as this being filed unaccompanied by special circumstances." See Tudor's L. C., Vol. II., 780.

The rules of equity are now to prevail, and a plaintiff is expressly empowered to sue in respect of an equitable right, Judicature Act, 1873, Section 24, Sub-section (1.) It would therefore seem that henceforth, in any Division of the High Court, the holder of a debenture will, as assignee of the contract contained in it, be entitled to sue the company liable on it in his own name. And it is submitted that Sub-section 6 of Section 25 of the Act cannot be construed so as to deprive him, by implication, of this right.

In reference to the above, it will be borne in mind that the transferee of a debenture purporting to be payable to bearer must, though no assignment in writing be made to him, in any view, be taken to be equitable assignee of the contract or of the monies secured by the instrument. *In re Agra and Masterman's Bank*, 2 Ch. 397; *In re Blakely Ordnance Co.*, 3 Ch. 158.

But in truth a company is rarely sued on its debentures. If it fails to pay them at maturity, or to meet the interest in due

Companies rarely sued on debentures.

Note. course, the debenture holder, if he cannot otherwise get paid, usually presents a petition to wind-up the company.

From what has been said, it appears that a debenture under seal can be so framed that many of the most valuable incidents of a negotiable instrument will be annexed to it.

Whether debenture to bearer may not be held negotiable by law merchant.

As to whether a debenture to bearer, under seal or otherwise, may not be held to have become a negotiable instrument by the Law Merchant, see *Goodwin v. Roberts*, L. R. 10 Ex. 337; S. C. 1 App. Cas. 476, and *Crouch v. Crédit Foncier*, L. R. 8 Q. B. 382.

MORTGAGE DEBENTURES.

Two kinds. There are two kinds of mortgage debentures. (a) Debentures secured by a trust or covering deed. See 4th Schedule to Form 10, *infra*, p. 440. (b) Debentures containing a charge upon the property of the company. See Forms 7 and 8, *infra*, pp. 435, 437.

Trust deed. The trust or covering deed above referred to usually contains a conveyance or assignment to trustees of all or some part of the company's property upon trust to permit the company to carry on its business therewith until default is made in payment of some principal or interest due to a debenture holder, and then to enter and sell the property, and out of the net proceeds to pay off the debentures and hold the surplus, if any, in trust for the company. The deed generally contains power for the trustees, after entry and till sale, to carry on the business of the company and divers other powers and provisions for the benefit of the debenture holders. See *infra*, Form 10.

Advantages of trust deed.

Debentures secured by a trust deed have some advantages over those not so secured; for, of course, the trustees having the legal title to the property can in case of default enter and sell, &c., without seeking the aid of the Court, whereas the only mode of enforcing the charge contained in a debenture not secured by a trust deed is by action.

Nevertheless the trustees of such a deed seldom like to accept the responsibility of exercising their power of entry and sale, &c., except under the direction of the Court, and if occasion arises for the exercise of such powers the usual course is either for the trustees or for a debenture holder to bring an action for the execution of the trusts of the deed. A

receiver, and if necessary a manager, is in due course appointed in the action, and the property sold or otherwise dealt with as the Court directs.

A trust deed is particularly necessary where debentures are to be charged upon real property situate abroad, for the right to the possession of land must be determined by the *lex situs*. The property should therefore be duly vested in trustees for the debenture holders according to the *lex situs*. To effect this it will generally be found necessary to execute (a) a transfer of the property to the trustees, which will have to be sent abroad for registration, &c., and (b) a trust deed reciting the transfer and declaring the trusts.

As to real property situate abroad.

If this course is not pursued the debenture holder, upon seeking to enforce his charge, may find that it is not recognised by the *lex situs*, and, further, that some subsequent purchaser or mortgagee of the company has acquired a good title to the property according to that law.

So too where ships are to be included in the security a trust deed is necessary, unless the company is to be entitled to sell its vessels at discretion.

As to ships.

The ships should either be transferred absolutely to the trustees, 17 & 18 Vict. c. 104, s. 55, or they may be mortgaged to the trustees for a definite sum, Section 66. In either case the instrument of transfer or mortgage must be in the statutory form duly recorded; there will be a separate deed containing a declaration of trust by the trustees.

It was, indeed, at one time thought that, unless property of the company was vested in trustees to secure the debentures, it was impossible to give the holders any preference or priority over the ordinary unsecured creditors in case the company came to be wound up. Lathom Brown, 26. And in this view it was, of course, essential to have a trust deed when the debentures were to be specifically secured on the company's property; but it has now been settled that a debenture containing a charge on the company's property is effectual, and the *necessity* in all cases of a mortgage to trustees therefore no longer exists.

Trust deed not essential.

The following are some of the leading cases as to the effect of debentures containing a charge on property:—

In re Marine Mansions Co., 4 Eq. 601 (decided July, 1867), the company had issued debentures, each of which contained a clause by which the company pledged "the property belonging

Marine Mansions Co.

to us for the time being during the subsistence of the said debenture, with all the buildings and stock on and connected with our said property, and all the receipts and revenues to arise therefrom," and a declaration that the entire debenture, loan, and interest thereon should be and remain a first charge "on our undertaking and property, and receipts and revenues aforesaid."

The company was ordered to be wound up, and it was held by Page-Wood, V.-C., that the effect of the debentures was to give the holders a charge in priority to other creditors, upon the land and other property of the company.

*Panama,
&c., Co.*

So too in *In re Panama, &c., Co. Limited*, 5 Ch. 318 (decided Feb., 1870), debentures had been issued, charging the "undertaking and all sums of money arising therefrom," with the repayment at a specified time of the money borrowed with interest in the meantime. The company was wound up before the debentures became due. It was held by Giffard, L.J., affirming the decision of Malins, V.-C., that the debenture holders acquired a charge upon all the property of the company, past and future, by the word "undertaking," and that they were entitled to be paid out of the property of the company in priority to the general creditors. His Lordship said that he took the object and meaning of the debenture to be this, "that the word 'undertaking' necessarily infers that the company will go on, and that the debenture holder could not interfere until either the interest which was due was unpaid, or until the period had arrived for the payment of his principal, and that principal was unpaid. I think the meaning and object of the security was this, that the company might go on during that interval, and, furthermore, that during the interval the debenture holder would not be entitled to any account of mesne profits, or of any dealing with the property of the company in the ordinary course of carrying on their business. I do not refer to such things as sales or mortgages of property, but to the ordinary application of funds which came into the hands of the company in the usual course of business. I see no difficulty in giving that effect to this instrument. But the moment the company comes to be wound up, and the property has to be realised, that moment the rights of these parties, beyond all question attach. My opinion is, that even if the company had not stopped, the debenture holders might have filed a

bill to realise their security. I hold that under these debentures they have a charge upon all property of the company, past and future, by the term undertaking, and that they stand in a position superior to that of the general creditors, who can touch nothing until they are paid." See also *In re Regent's Canal Iron Works Co., ex parte Grissell*, 3 Ch. Div. 411.

The last case which need be cited is *In re The General South American Co., Limited*, 2 Ch. Div. 337 (decided March, 1876). In that case the company, which was formed for carrying on the business of general merchants between Europe and America by way of commission or otherwise, had issued debentures each of which purported to mortgage and charge all the property, book-debts, credits, assets, monies and other effects, of which the company was then possessed or entitled, or should at any time thereafter become possessed or entitled, with the payment of the sum of 100*l.* and interest as therein mentioned.

*General South
American Co.*

Certain conditions were indorsed on each debenture providing that the debentures, to the amount of 130,000*l.* intended to be issued, should rank *pari passu*, and that "notwithstanding the within written debenture and the security thereby created, the said company and the directors thereof shall be at liberty to continue to employ and use the present and future property, book-debts, &c., of the said company, or the proceeds thereof, or such parts thereof as they may, from time to time, consider necessary for the purpose of continuing and carrying on the business of the company, and meeting and paying the debts, liabilities and engagements of the company, without any liability for so doing to the holder of the within written debenture until default in payment of any principal or interest money within secured, or unless and until . . . any petition shall be presented for winding up the said company, upon which any order shall be made for the winding up of the same." Provided that on the happening of any of the said events the authority thereby given should determine, and the charge become immediately enforceable.

The company was ordered to be wound up by the Court, and the debenture holders claimed priority over the general creditors. The question was raised upon a summons by the debenture holders for a declaration that they were entitled to a charge on the assets in priority to the general creditors and for

consequential directions. The order made (14 March, 1876), by Malins, V.-C. (A. 459), was as follows :—

Order of
Malins, V.-C.

"Upon the application of A. B., &c., &c., being together the holders of all the mortgage debentures of and issued by the above-named company, for the amounts set forth in the schedule hereto opposite the respective names of the said applicants, and all hereinafter referred to as the debenture holders, which, upon hearing the solicitors for the applicants, and for the official liquidator of the above-named company, and for, &c., was adjourned to be heard in Court, coming on the 26th day of February, 1876, and this day to be heard accordingly, and upon hearing, &c. This Court being of opinion that the property, book-debts, credits, assets, monies, and other effects, of or to which the above-named company was possessed or entitled at the commencement of the winding up of the said company, are subject to the debenture securities and charges thereby created in favour of the applicants, and ought to be applied in the first instance to satisfy or provide for, *pro tanto*, the respective amounts due to the applicants for principal and interest in respect of their mortgage debentures, rateably, in proportion to the said respective amounts of such mortgage debentures, in priority to the general or unsecured creditors of the company. It is ordered that the liquidators of the above-named company do, out of the assets of the said company, pay and satisfy the said principal monies due to the said debenture holders, with interest thereon, at the rate of 18 per cent. per annum, down to the day of payment; and do also pay to the said debenture holders their costs of and occasioned by this application, to be taxed by the taxing master, as between solicitor and client, in case the parties differ, including the costs of the summons on the 18th day of June, 1875, taken out by the said liquidators, and all others the costs of the said debenture holders (if any), properly incurred as mortgagees, all such payments to be made in priority to the payment of the costs hereinafter mentioned and of the costs of the liquidators of this application and also previously to any payment to the general and unsecured creditors of the company. And it is ordered that the liquidators do, out of the assets of the company, retain their own costs, and pay the said, &c., their costs of this application and of the said summons, such costs to be taxed by the taxing masters, as between solicitor and client, in case the parties differ."

Name.	Amount.
A. B. _____	£ 11,000
&c. _____ &c. _____	s. 0
	d. 0
	&c.
	£72,500 0 0

There was an appeal from this order, but it was dismissed, the debenture holders to "be at liberty to add their costs of the said motion to their securities," 2 Ch. Div. 314.

Cases in which
trust deed not
usually
adopted.

When, as in the case last mentioned, the property of a company is of a fluctuating character, consisting altogether or for the most part of choses in action, bills, notes, and chattels, which in the course of business are being constantly

dealt with, mortgage debentures not secured by a trust deed are generally preferred.

Occasionally mortgage debentures are issued in part secured by a trust deed, which will declare the trusts of certain portions of the company's property, *e.g.*, land and other property not required to be dealt with by the company in the ordinary course of its business—and partly by a charge contained in the debenture upon all the residue of the company's property.

Mortgage debentures in part secured by trust deed.

As far as the company is concerned it is more convenient, if possible, to dispense with a trust deed.

It is usual to insert a clause or declaration in mortgage debentures, providing that the debentures of the same issue shall rank *pari passu*. If the debentures are secured by a trust deed this declaration may be inserted in that deed instead of in the debenture. The object of the clause or declaration is to place all the debentures on a level. In its absence they would rank according to date of issue, which might give rise to serious disputes and complications.

As to clause that debentures shall rank *pari passu*.

If future property of the company is to be included in a charge effected by mortgage debentures, the terms of the charge ought to be expressly extended thereto.

As to expressly including future property.

Thus, *In re New Clydach, &c., Co.*, 6 Eq. 514, debentures had been issued, charged upon "the undertaking and all the real and personal estate" of the company: the company was ordered to be wound up; and, its chattels and personal estate having been sold in the winding up, the question arose whether the debentures were a charge on chattels acquired by the company after the issue thereof. Lord Romilly, M.R., said: "I think I must hold that the debentures passed all personal property in existence at their respective dates. But it appears that they are not all of the same date, and that may give rise to questions of importance. Assume that one set of debentures were issued in May, and a second set in August, then the May debenture holders would have a charge upon all the stock in trade and all the chattels of the company which existed in May at the date of the debentures, and the subsequent debenture holders would have all which existed in August."

It was contended in the case of *The Marine Mansions Co.*, 4 Eq. 605, that the issue of debentures, including all the

Object of clause en-

abling company to continue its business.

property of a company, was a breach of trust, since it must paralyse the directors in the conduct of the company's business, but it is now settled that it is not. *S. C. and In re Panama, &c., Co.*, 5 Ch. 319. However it is usual to provide against any such objection by inserting a clause (see *infra*, pp. 435 and 438), enabling the company, until default, &c., to deal with the mortgaged property in the ordinary course of its business. This also avoids another difficulty which might arise if the company were disposing of any of its property, viz., the purchaser might object that he had notice of a specific equitable charge.

Remedies of debenture holders.

With regard to the remedies of a debenture holder:—If default is made by the company in payment of the principal or interest in accordance with the terms of the debenture the holder will be entitled to sue for the amount due. See *supra*, p. 401.

Right to sue.

If the debenture is a mortgage debenture the holder may also, subject to any conditions contained in the instrument, or, if it be secured by a trust deed, to any conditions in such deed, sue for the realisation of the security. See *supra*, p. 402.

Action of mortgage debenture holders on behalf, &c.

Where the debenture is not secured by a trust deed the holder will sue the company on behalf of himself and all other the debenture holders of the company, or all other the debenture holders of a particular series, and will claim that accounts should be taken of what is due, and that the securities may be enforced by foreclosure or sale.

The action of *Huntingdon v. The Coal Consumers*, 1876, H. 114 *Association, Limited*, was an action of this kind. After the writ was issued the company was ordered to be wound up, and on August 4th, 1876, the following order was made by Malins, V.-C., in the winding up and in the action:—

Order of Malins, V.-C.

“Upon, &c., it is ordered that the following accounts and inquiries be taken and made, that is to say :

1. An inquiry what debentures or mortgage securities have been issued or created by the said association or the directors thereof since the registration of the said association.
2. An inquiry which of the debentures are still unpaid or subsisting, and what persons are the holders of the same respectively.
3. An inquiry what property, monies, or assets, of the association, are included in the said several debentures, and the charge or security thereby created.
4. An account of the principal and interest monies secured by or due under or in respect of the said debentures respectively, and to whom the same respectively are due.

And it is ordered that the proceedings in the action of *Huntingdon v.*

The Coal Consumers Association, Limited, 1876, H. 114, be stayed until further order, with liberty to any party to apply on giving notice to the other parties appearing upon the present application."

Dawson v. Owen, 1876, D. 166, was another action of the same kind. In that case the plaintiffs were suing the Industrial Coal and Iron Company, Limited, on behalf of themselves, &c. On 11th November, 1876, the following order was made by Malins, V.-C. :—

Dawson v. Owen.

"Upon motion made unto this Court by counsel for the plaintiffs, and upon hearing counsel for the defendants, and upon reading the plaintiffs' statement of claim, and the statement of defence, and an order dated the 29th August, 1876 [*for receiver and manager by consent*]. This Court doth order that the following accounts and inquiries be taken and made, that is to say :

Order of
Malins, V.-C.

1. An account of what is due for principal and interest to the plaintiffs, and the other holders of debentures issued by the defendant company, distinguishing the holders of the A. and B. debentures in the pleadings referred to.
2. An inquiry of what the property comprised in and charged by the A. and B. debentures, respectively, consists, and in whom the same is vested.
3. An inquiry what steps ought to be taken for getting in such parts (if any) of the said property as may be outstanding.
4. An inquiry in what way the property comprised in or charged by the said respective securities can best be realised for the benefit of the plaintiffs and the other debenture holders, and whether a sale or mortgage, or sales or mortgages, of any and what portions of the same is or are necessary or desirable for that purpose.
5. An inquiry whether any and what contracts have been entered into, and what steps ought to be taken in respect thereof.

"And it is ordered that the receiver and manager appointed by the said order of the 29th August, 1876, be continued upon the same terms.

"And it is ordered that the further hearing of this matter be adjourned without requiring the action to be brought on for trial.

"And any of the parties, including the holders of any of the said debentures issued by the defendant company, are to be at liberty to apply to the Court or to the judge as they may be advised." [A. 1778.]

Where the debentures are secured by a trust deed the trustees can, if the occasion arises and they desire to act under the direction of the Court [*supra*, p. 402], bring an action against the company for the execution of the trusts of the deed. For an example see *Campbell v. Compagnie Générale de Bellegarde, Limited*, 2 Ch. Div. 181.

Action by
trustees of
covering deed.

But generally a debenture holder brings the action making the company and the trustees defendants. *Louth v. The Western of Canada Oil, &c., Co.*, incidentally mentioned in 17

Action by
debenture
holder for

execution
of trusts.

Eq. 1, is an example. The action (1875, B. 25) of *Brown* [suing on behalf of himself and all other the holders of the first mortgage debentures issued by the Wedgewood, &c., Co., Limited] v. *The Wedgewood, &c., Co., Limited, Lord Sheffield, Otway and Clayton*, defendants, is another case of the same kind.

In *Perry (on behalf, &c.) v. The Clutton Coal Co., Limited, and others* [the trustees], the following order was made by Malins, V.-C., July 7th, 1876 :

"Upon motion for judgment this day made unto this Court, &c., and upon hearing counsel for the defendants, and upon reading the plaintiff's statement of claim and a deed of covenant, dated, &c., this Court doth declare that the plaintiff and the other holders of mortgage debentures of the above named company issued under and in pursuance of the said deed, dated, &c., are entitled to a charge on all the real and personal property of the company, for securing the repayment of the principal monies and interest in the said mortgage debentures mentioned, and doth order that the following account be taken, namely, an account of what is due to the plaintiff and the other holders of mortgage debentures of the company on the security of the said debentures and the said deed, and it is ordered that the real and personal property comprised in the said deed and the business of the company be sold as a going concern with the approval of the judge. And it is ordered that the money to arise by such sale will be paid into bank to the credit of this action of *Perry, &c.*, 1876, P. 139. And it is ordered that the receiver appointed and the injunction awarded by the said order, dated the — of June, 1876, be continued, and [further consideration adjourned]"—B. 1231.

Receiver and
manager.

In an action to enforce mortgage debentures a receiver and manager may be appointed. *Peek v. Trimsaran Iron Co.*, 2 Ch. Div. 115. The order in this case was as follows :—

"Upon motion, &c., This Court doth order that a proper person be, upon his giving security, appointed to receive the rents and profits of the defendants' real estate (including leaseholds,) and to manage the defendants' colliery business, and get in the outstanding debts and effects belonging to the defendants. And it is ordered that the defendants do deliver over to such receiver all the stock, plant, machinery, and effects of the defendants, and all securities in their hands for such outstanding debts and effects, with all books and papers relating thereto, and in case it shall be necessary to put any of the debts in suit for the recovery thereof, the same to be done with the approval of the judge, and the person so to be appointed is to be at liberty to make use of the names of the plaintiffs and defendants who are to be indemnified therein out of the premises comprised in the security of the plaintiffs in the said affidavit mentioned, and out of the said stock, plant, machinery, and effects. And it is ordered that the person so to be appointed do from time to time pass his accounts, and after retaining in his hands such sums as shall be deemed sufficient to carry on the said collieries, pay the balances which shall be certified to be due from him, in Court to the credit of this cause of, &c., and [invest and accumulate]."—*Peek v. Trimsaran Co.*, M. R. 10 Feb. 1876, B. 246 ; 2 Ch. Div. 115.

In each of the actions mentioned at the top of page 410, Malins, V.-C., appointed a receiver and manager. In the one, 31 July, 1873 (B. 2170), and in the other, 2 Aug., 1875 (B. 257). The receiver in the latter case was at the same time appointed provisional official liquidator.

It very commonly happens that where an action is brought to enforce mortgage debentures the company, before the action proceeds far, resolves on a voluntary winding-up, or is ordered to be wound up by the Court. In such case if a receiver has been appointed in the action, either he will be discharged and the liquidator appointed receiver in his place, as in the case of *Campbell v. Compagnie Générale de Bellegarde*, 2 Ch. Div. 181, or the receiver will be appointed liquidator. This was done in the case of the *Trimsaran Company*, which was ordered to be wound up April 1st, 1870, and on 24th of May, T. D. R., who had been appointed receiver and manager in the action pursuant to the decree above-mentioned, was appointed liquidator. The last would seem more particularly to be the proper course where the assets are all subject to the debentures and are likely to be insufficient. See also the order of Jessel, M. R., in *The Canada, &c., Co.*, *infra*, "Orders," No. 20, in which it was provided that the same person should be receiver and liquidator.

In the action of *D'Oyley v. British Chemical, &c., Co.*, 1876, D. 143, the following order was made by Bacon, V.-C., 29th of June, 1876 :—

Appointment
of liquidator
receiver.

"Upon motion, &c., the judge doth appoint G. C. the interim provisional liquidator of the said company, receiver and manager on behalf of the plaintiff and all others, the debenture holders of the defendant company, of all the property and assets of the defendant company, comprised in or subject to the debentures issued by the defendant company, to the plaintiff and other debenture holders, as in the said affidavit mentioned, and, &c. [*pass accounts, pay balances, invest, and accumulate*]." A. 1657.

In *Campbell v. Compagnie Générale de Bellegarde*, 2 Ch. Div. 181, Bacon, V.-C., said that it did not seem to him to be necessary to make a formal order appointing the liquidator receiver in the suit in the place of the receivers who were discharged; however, under the circumstances such an order was made.

Where an action by debenture holders is pending, when a winding-up order is made, the proper course appears to be to make application for an order in the winding-up and the action

What course
to be pursued
where wind-
ing-up super-
venes.

for giving effect to the debenture holders' rights. See the order in *Huntingdon v. Coal Consumers' Association*, *supra*, p. 408. However the action may be allowed to proceed as in *Campbell v. Compagnie Générale de Bellegarde*, *ubi supra*.

As to assertion of rights of mortgage debenture holders by summons in winding-up.

If before the winding-up order is made no action has been brought by the debenture holders, the proper mode in a simple case of asserting their rights is by summons as in the *General South American Company*, see *supra*, p. 405.

This was the course adopted in the *Marine Mansions Co.*, 4 Eq. 601; and in the *Panama, &c., Co.*, 5 Ch. 318, *supra*, p. 404. See also the *Pooley Hall Colliery Co.*, 21 L. T. N. S., 691.

When liberty to bring action given.

However, where there are any serious disputes or complicated questions to be decided with regard to the rights of the debenture holders, it may be more convenient to raise and settle them in an action than upon a summons. See Lord Cairns' observations in *Murray v. Bush*, L. R. 6 H. L. p. 46.

In the following recent cases orders were made under Section 87 of the Act giving liberty to bring actions:—

1. In the winding-up of the *New Town Manure Co., Limited*.
2. In the winding-up of the *Yniscedwyn Co., Limited*.

The order in the former was made by Jessel, M.R., 12th Dec., 1876, and was as follows:—

"Upon the application of Richard Hooper, a debenture holder of the said company, by summons dated the 11th December, 1876, and upon hearing the solicitors for applicant, for the official liquidator of the said company, and for, &c., and for , and trustees for the debenture holders of the said company, and upon reading, &c. It is ordered that the said R. Hooper, as such alleged holder of eight debentures of 50*l.* each in the above-named company, be at liberty to take all such proceedings in this Court against the above-named company, and other parties as the applicant may be advised." [B. 1878.]

The order in the winding up of the *Yniscedwyn, &c., Co., Limited*, was made by the same judge, 5th Dec., 1876. It was [B. 1917] that the applicant be at liberty

—"to commence and prosecute an action against the above named company in this Court and Division, for the recovery of 2,000*l.*, the amount of 20 debentures of 100*l.* each, of the above-named company, numbered, &c., of which he is the holder; such debentures purporting to form a charge upon the undertaking, and all the land, ironworks, collieries, mines, minerals, and hereditaments, of every tenure belonging to the company, and all the works, machinery, plant, property, and effects of the company. But such action is not to be prosecuted beyond giving notice of trial therein, without further leave of the judge first obtained."

Costs.

Holders of mortgage debentures asserting their rights in the

winding-up by summons, are entitled to be paid principal, interest and costs. "The only point remaining to be decided in this case was whether the mortgagee [*i.e.* the debenture holder] should be paid his principal, interest, and costs out of the fund after deducting only the costs of realising the property, and I am of opinion that he is so entitled. . . . This is the case of a mortgagee who, not wishing to put the estate to the expense of a separate suit, does not file a bill, but takes the simple and proper course of coming in under the winding-up to have his rights decided by summons in chambers," *per* Page-Wood, V.-C. *In re Marine Mansions Co.*, 4 Eq. 611.

This of course is merely giving effect to the general rule as to the rights of a mortgagee. See Pemberton, 374; Fisher, 999.

The costs were dealt with in like manner in the *General South American Company's Case*, *supra*, p. 406.

Besides the right of suing the company for payment of the debt and for the realisation of his security, a debenture holder may, in a proper case, present a petition for the winding-up of the company, and subject to the provisions of the Act, is, as a creditor, entitled *ex debito justitiæ* to a winding-up order, if he cannot otherwise get paid.

Winding-up
petition by
debenture
holder.

But although as between himself and the company he is entitled to a winding-up order, he is not entitled as between himself and the other creditors to an *immediate* order, and the petition may accordingly be ordered to stand over for a limited period. *In re Western of Canada, &c., Co.*, 17 Eq. 1; *In re St. Thomas' Dock Co.*, 2 Ch. Div. 117; see also Section 91 of the Act.

And if before the petition comes on for hearing a resolution for a voluntary winding-up is passed, and at the hearing it sufficiently appears that the majority of the creditors are in favour of a supervision order, the petitioner is not entitled as against them to a compulsory order. *In re West Hartlepool Iron Works Co.*, 10 Ch. 618.

If an order to wind up the company is made, a debenture holder will of course be entitled to prove for the monies due to him on his debenture in the usual way. *Imperial Land Co. of Marseilles*, 11 Eq. 478; *Re General Estates Co. Ex parte City Bank*, 3 Ch. 758; *In re Blakely Ordnance Co.*, 3 Ch. 154.

Proof by de-
benture holder
in winding-up.

But Section 10 of the Supreme Court of Judicature Act, 1875, must now be borne in mind. By that Section it is provided that "in the winding-up of any company under the

Alteration in
rights of se-
cured creditor
by Judicature
Act, 1875.

Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of the winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to the debts and liabilities provable, and as to the valuation of annuities and future or contingent liabilities, respectively as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of any such company, may come in under the winding-up of such company, and make such claims against the same as they may be entitled to by virtue of this Act."

Rights before
the Act.

Before this enactment, a secured creditor, *e.g.*, the holder of a mortgage debenture, was entitled to prove in the winding-up from the whole amount due to him at the time of sending in his claim, and not merely, as in bankruptcy, for the balance remaining due after realising or valuing his security, *Kellock's Case*, 3 Ch. 769; *London Bombay, &c., Bank*, 9 Ch. 686. But henceforth the rule in bankruptcy will prevail.

Position of
liquidators
where assets
insufficient to
pay mortgage
debenture
holders.

Where a company which has issued mortgage debentures charged upon all its property is ordered to be wound up, candidates for the office of liquidator should consider whether the assets are more than sufficient to pay the debenture debt and costs of realisation, for as against the debenture holders the costs of realisation only will be allowed. If the fund is deficient, the liquidators will not be entitled to costs or remuneration. *In re Regen's Canal Ironworks Co., Limited*, 3 Ch. Div. 426.

AS TO THE POWER TO ISSUE DEBENTURES.

Company's
power to issue
debentures.

First, as to the power of a company.

This must depend upon whether the company has power (1) to borrow, and, if it is proposed to issue mortgage debentures, (2) to mortgage.

With regard to the power to borrow, the memorandum very commonly contains express power, and, if so, no doubt can exist; but, even where this is not the case, the nature of the business of the company, and the general words contained in the memorandum are usually sufficient to imply a power as to this. See further, *supra*, p. 10.

A power to mortgage its property is also very commonly inserted in the memorandum, but this too may arise by implication. Thus *In re Patent File Co.*, 6 Ch. 85, Mellish, L. J., said: "It was argued that no company can mortgage unless expressly authorised to do so. Now the company has property which it is authorised to deal with, and I should say that the true rule is just the contrary; namely, that a company can mortgage unless expressly prohibited from doing so. The 43rd Section of the Act appears to recognise the creation of mortgages as an ordinary incident to a company." See further as to this, *supra*, p. 10.

If the debentures are to be bearer, the further question arises, whether the company has power to issue negotiable or *quasi* negotiable instruments, for the Companies Act, 1862, does not confer on all companies registered under it a power of issuing negotiable instruments. Such a power only exists where, upon a fair construction of the memorandum of association it was intended to be given. See further as to this, *supra*, p. 106.

Next with regard to the power of the directors to issue debentures on behalf of the company. This must of course depend on the articles of the company. Express powers are generally given to them [*supra*, p. 163], but general powers are sufficient, *supra*, p. 184.

Power of
directors.

A power to raise money upon all or any part of the property of the company or upon debentures, notwithstanding the alternative form, warrants the issue of mortgage debentures. *In re Panama, &c., Co.*, 3 Ch. 322.

In some cases the directors only have power to issue debentures with the sanction of a special resolution or of the company in general meeting; and in such cases the necessary sanction ought of course to be obtained, but it does not follow that debentures irregularly issued will be void. See *supra*, p. 280.

It was doubted by Rolt, L. J., in *re Blakely Ordnance Co.*, 3 Ch. 159, whether the mere power of issuing debentures would authorise the directors of a company to issue debentures to be transferable free from equities. He held however that the articles in that case did give such an authority, for they expressly authorised the directors to carry into effect an agreement which provided for the issue by the company of debentures payable to bearer.

If therefore the articles empowered the directors to issue debentures payable to bearer, it would seem that no question can arise. But even if there be no such power given to the directors, provided that they are empowered to issue debenture bills and notes on behalf of the company, it will not be considered *ultra vires* on their part to issue debentures to bearer. *In re Imperial Land Co. of Marseilles*, 11 Eq. 478. See also *In re General Estates Co.*, 3 Ch. 758 ; *In re Marine Mansions*, 4 Eq. 609 ; *Inns of Court Hotel Co.*, 6 Eq. 82.

And at any rate if the company has power to issue debentures, it can by special resolution empower the directors to issue debentures transferable free from equities. This seems to follow from the decision in the *Blakely, &c., Co.*, 3 Ch. 154.

As to charging uncalled capital.

If mortgage debentures are to be charged upon the uncalled capital of the company, it must be seen that the directors have power to do this. Generally speaking, calls are to be made at the discretion of the directors, and unless they are expressly, or by necessary implication, empowered to mortgage the future calls, it will be *ultra vires* to do so.

A power to directors to borrow on the security of the "funds or property" of the company is not sufficient. *Stanley's case*, 4 De G. & S. 407 ; 33 L. J. N. S., Ch. 535.

Nor is a power "to pledge mortgages or charge the works, hereditaments, plant, property, and effects of the company." *Sankey Brook Coal Co.*, No. 2, 10 Eq. 381 ; nor a power "to mortgage or charge the property of the company." *Bank of South Australia v. Abrahams*, 6 P. C. 562. See also *King v. Marshall*, 33 Beav. 565 ; *Lishman's Case*, 23 L. T. N. S., 759, it seems is not law. See 6 P. C. 562.

What sufficient authority.

But where the articles contained power to secure monies borrowed "by mortgaging (*inter alia*) all or any future calls to be made on all or any part of the shares of the company," it was held by Jessel, M. R., that a mortgage by the directors of future calls was valid. *Phoenix Bessemer Company's Case*, 44 L. J. N. S. 683.

Where there is such a power it must be seen that the memorandum of association does not control it. Thus in the case just cited one of the objects specified in the memorandum was "the raising of money for all or any of the purposes of the company upon mortgages of any property of the company, or

upon the debenture bonds, bills, or notes, or any other securities of the company, and it was contended that this express power to mortgage "property" by implication prohibited the company from mortgaging future calls, which are not property, and, consequently, that the power in the articles was void as being at variance with the memorandum. However, his Lordship said: "In this case it has been argued that a mortgage of future calls is not authorised by the memorandum, and the memorandum controls the articles. But the memorandum and articles are contemporaneous documents, and the rule of construction is, that if contemporaneous documents can be read in two ways, in one of which they appear consistent and in the other inconsistent, the construction is to be preferred which will render them consistent. . . . In the present case the terms of the articles are clear, but so are also, to my mind, the terms of the memorandum. I agree that the words 'upon mortgage or charge of any property of the company,' would not of themselves authorise a mortgage of future calls; but the concluding words, 'or upon the debentures, bonds, bills, or notes, or any other security of the company,' are so ample, that their meaning could hardly be amplified."

It follows therefore that even where the articles contain express power to mortgage future calls the memorandum must be scrutinised to see that it does not abridge the power.

It was indeed at one time thought that a mortgage of uncalled capital could not be made where by the regulations calls were to be made by directors at their discretion. For it was said: "What would the remedy be but the appointment of a receiver to get in those calls? And how would it be possible for any receiver of this Court to exercise the discretion which, according to the deed, is reposed in the directors?" *Per* Lord Justice Turner; *Stanley's Case*, 4 D. G. & S. 407; S. C. 33 L. J. Ch. N. S. 535.

Mortgage of
uncalled
capital valid
if duly autho-
rised.

However, in the recent case of the *Phoenix Bessemer Company*, 44 L. J. N. S., Ch. 684, Jessel, M. R., observed, in reference to the passage just cited: "But with all possible respect to the Lord Justice, these difficulties are not difficulties to my mind at all. . . . Now if a company may at their discretion mortgage future calls, there must be some way to make the mortgage a good mortgage. You may appoint a receiver, and either order the directors to make calls and pay the pro-

ceeds to him, or you may order the receiver himself to make the calls."

Debentures
may be issued
at a discount.

As to the issue of debentures at a discount, see *In re Anglo-Danubian, &c., Co.*, 20 Eq. 339; *In re Regent's Canal Iron-works Co.*, 3 Ch. Div. 43; *Campbell's Case*, 4 Ch. Div. 470. See also *supra*, p. 184.

Bills of Sale
Act.

A trust deed comprising chattels and securing mortgage debentures must, as against execution creditors, be registered as a bill of sale, in accordance with 17 & 18 Vic. c. 36. And so too a mortgage debenture not secured by a trust deed ought, if it affects chattels, to be registered, but it rarely is.

Such mortgages will however be valid, as against the liquidators of the company, without registration. *Re Marine Mansions*, 4 Eq. 601.

As to the mode of complying with Section 1 of the Bills of Sale Act (17 & 18 Vic. c. 36) in the case of a company, see *Shears v. Jacob*, L. R. 1 C. P. 513; and *Deffell v. White*, L. R. 2 C. P. 144.

Register of
mortgages.

By Section 43 of the Companies Act, 1862, it is provided that: "Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company, who knowingly or wilfully authorises or permits the omission of such entry, shall incur a penalty not exceeding fifty pounds."

Hence it is necessary where mortgage debentures, secured by a mortgage to trustees, are issued, duly to register the mortgage, and if there is not a mortgage to trustees, each mortgage debenture ought to be duly registered.

When un-
registered
mortgage
debentures
void.

If a mortgage debenture not duly registered is issued to a director or other officer of the company, it will be invalid as against the creditors of the company in the winding up. Thus in *The Native Iron Ore Co.*, 2 Ch. Div. 345, three of the directors had advanced money to the company and taken by way of security a mortgage debenture of the company. The debenture was entered in a register which merely stated the

date, names, and addresses of the parties, but contained no description of the property charged. The company was ordered to be wound up and the debenture was held invalid. "It is an established rule that where a director or officer of a limited company advances money on the security of a debenture or mortgage of the company, and omits to register it in accordance with the Act, the consequence is that he has no charge as against the creditors," *per* Mellish, L. J.

But where a company mortgaged chattels to two of the directors, who furnished the secretary with the necessary particulars for registration and directed him to register the same, and he omitted to do so, it was held that the directors had not "knowingly and wilfully authorised or permitted the omission" of the entry of the mortgage in the register, and, accordingly, that it was not void. *In re Borough of Hackney Newspaper Co.*, 3 Ch. Div. 669.

The shareholders of a company stand in a different position to that of the directors, since they are not bound to see that the register is duly kept. Hence if they advance money on mortgage debentures, which the directors omit duly to register, their rights will not be affected. *In re General South American Co.*, 2 Ch. Div. 344. And the same principle applies *à fortiori* to holders of mortgage debentures who are not members or officers of the company.

Unregistered mortgage debentures of members valid.

Directors of a company are not under any disability to lend money to their company, and if the money be *bonâ fide* advanced by them to the company and *bonâ fide* applied for the purposes of the company, the company must repay it. See Lindley, 800; and *Campbell's Case*, 4 Ch. Div. 470.

Directors may lend to company;

Nor are the members of a company under any such disability. Thus *In re General South American Company*, *ubi supra*, p. 405, 72,000*l.* was raised on mortgage debentures at 18 per cent. per annum interest, all but 4000*l.* being advanced by members of the company. They were held valid in the winding up and to give the holders a charge upon all the property of the company, in priority to the general creditors.

and so may members.

As to coupons:—

Coupons.

It has for some time past been usual to make the interest on debentures payable on presentation of coupons annexed thereto. When the period for payment approaches a coupon is detached and is commonly forwarded for collection through a banker.

Convenience
of

By this means the payment of the interest is facilitated, for, however the coupon be framed, it is generally assumed that the bearer is well entitled to the interest therein specified. There is another convenience in having coupons attached to a debenture, namely, that the holder can, if in want of cash, cut off and sell the coupons or any of them, or procure the same to be discounted.

There are two modes of framing these coupons :

FORM I.

Thus :—

The — Company, Limited.

Debenture, No. —.

Interest coupon, No. —.

For 3*l*.

Half year's interest payable on the 1st January, 1877,

[at, &c.]

E. F.

[No stamp.]

Secretary.

FORM II.

Or thus :—

Debenture, No. —.

Interest coupon, No. —.

The — Company, Limited, will, on the 1st January, 1877, pay to the bearer [at, &c.] the sum of 3*l*.

For the said company.

C. D., Director.

[A promissory note stamp.]

When coupon
a token.

A coupon similar to Form 1 is a mere token. It "is nothing more than a mere piece of paper ; it is no bill of exchange ; it is no promissory note, since it wants the essential character of a promissory note, seeing that there is not the name of any person mentioned in it as payee." *Per* Parke, B., *Enthoven v. Hoyle*, 21 L. J. C. P. 100 ; 13 C. B. 373. Hence the purchaser of such an instrument does not obtain any right of action thereon against the company. If he sues it must be as equitable assignee of the contract to pay the interest contained in the debenture, and he must sue subject to equities : moreover he will not acquire any right to the interest specified in the coupon if his vendor was not entitled thereto, *e.g.*, had stolen, or found, the coupon. The company cannot safely pay

the bearer without investigating his title unless the debenture contains a receipt clause applicable to the coupons.

But a coupon similar to Form 2 is a promissory note, and consequently possesses all the incidents of a negotiable instrument, *e.g.*, it passes by delivery, and the holder for the time being can sue on it free from equities. Hence any person can safely purchase, discount, or otherwise deal with the coupon without inquiry, and the company may safely pay the bearer. See *supra*, p. 386, as to the incidents of a negotiable instrument.

When coupon
a promissory
note.

It would seem that coupons in Form 2 are possessed of considerable advantages over those in Form 1. But until recently Form 1 only has been in use in England. Both forms are used in the United States: *Thompson v. Lee County*, 8 Wallace, 421; *Haven v. Grand Junction, &c., Ry. Co.*, 109, Mass. 88; and there seems no reason why coupons in Form 2 should not in many cases be used here. Even where the debenture itself is not to bearer, it will save trouble and facilitate the payment of interest if the coupons are in Form 2. If desired they can be made "to order," but for the same reasons which are mentioned, *infra*, p. 426, as rendering it undesirable to make debentures to order, it seems inexpedient to make coupons to order.

Advantages
of Form 2.

Of course Form 2 can only be adopted when the company has power to issue promissory notes. See *supra*, p. 106; but most of the companies that issue debentures can do this. With regard to the execution of coupons in Form 2 the directors will authorise one or more of their body to execute.

If thought fit the name of the executing director can be signed by means of a stamp. "I see no distinction between using a pen or a pencil and using a stamp, where the impression is put upon the paper by the proper hand of the party signing." *Per* Bovill, C. J., *Bennett v. Brumfitt*, L. R. 3 C. P. 31. The law in the United States is the same. *Pennington v. Bachr*, 48 Cal. 565.

As to stamp-
ing signature.

The Stamp Act, 1870 (see Schedule) imposes the following duties on a mortgage, bond, debenture, or covenant:—

Stamps.
Debenture

(1.) Being the only, or principal, or primary security for the payment or repayment of money not exceeding 25l. 0 0 8

			£	s.	d.
Exceeding 25 <i>l.</i> and not exceeding 50 <i>l.</i>	.	.	0	1	3
„ 50 <i>l.</i>	„	100 <i>l.</i>	0	2	6
„ 100 <i>l.</i>	„	150 <i>l.</i>	0	3	9
„ 150 <i>l.</i>	„	200 <i>l.</i>	0	5	0
„ 200 <i>l.</i>	„	250 <i>l.</i>	0	6	3
„ 250 <i>l.</i>	„	300 <i>l.</i>	0	7	6
„ 300 <i>l.</i>					

For every 100*l.* and also any fractional part of 100*l.* of such amount 0 2 6

(2.) Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped :

For every 100*l.*, and also for any fractional part of 100*l.* of the amount secured 0 0 6

Promissory
note.

Under the same Act a promissory note is liable to the following duty :—

Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5*l.* 0 0 1

Exceeds 5*l.* and does not exceed 10*l.* 0 0 2

„ 10*l.* „ 25*l.* 0 0 3

„ 25*l.* „ 50*l.* 0 0 6

„ 50*l.* „ 75*l.* 0 0 9

„ 75*l.* „ 100*l.* 0 1 0

„ 100*l.*

For every 100*l.* and also for any fractional part of 100*l.* of such amount or value 0 1 0

If, therefore, a debenture is intended to operate as a promissory note, it should be stamped accordingly, but in other cases it will be stamped as a debenture.

Section 9 of the Stamp Act, 1870, provides as follows :—

(1.) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or, if used, is not to be available for an instrument of any other description.

(2.) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid, is not to be deemed duly stamped, unless it is stamped with a stamp so appropriated.

Section 53 is as follows :—

1. Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount, but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, and of ten pounds if the same be so payable.

(2.) Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

A coupon or warrant for interest attached to or issued with any security is exempted from stamp duty by the Stamp Act, 1870. See Schedule, under title, "Bill of Exchange" Exemptions. If, however, the coupon is in effect a promissory note (see *supra*, p. 421), it might perhaps be contended that it ought to be stamped accordingly. Possibly the exemption would be held to apply only to such coupons as in *Enthoven v. Hoyle*, 16 Jur. 272 ; 21 L. J., C. P. 100 ; 13 C. P. 373 ; see *supra*, p. 420. Under the circumstances it would seem to be expedient, where coupons in Form 2 (*supra*, p. 420) are used, to stamp them as promissory notes ; the expense is small, and subsequent difficulties may thereby be obviated.

DEBENTURES.

Forms.

FORM I.

DEBENTURE to BEARER, INTENDED to OPERATE as PROMISSORY NOTE.

The (a) — Company, Limited.
Incorporated under the Companies Acts, 1862 and 1867.

Capital, £——.

Bankers, ——.

Office, ——.

No. —— Debenture [100*l.*]

The —— Company, Limited, will, on the —— day of ——, 18——, pay to the bearer (b) of this debenture at the —— Bank, No. —, —— Street, in the City of London, or at the registered office of the company, the sum of [100*l.*] (c).

And the said company will also pay to the bearer (d) of this debenture interest at the rate of 6 per cent. per annum on the said sum of [100*l.*], by equal half-yearly payments, on the 1st day of November and 1st day of May in each year, upon presentation and delivery of the coupons hereto annexed, the first of such half-yearly payments to be made on the 1st day of November, 1877.

IN WITNESS whereof the company hath caused two of its directors to set their hands hereto this —— day of ——.

For (e) and on behalf of the company.

C. D. }
E. F. } Directors.

As to affixing the seal, see *infra*, note (f).

WITNESS,

G. H., Secretary.

Form of Coupon.

The —— Company, Limited.

Debenture, No. ——.

Interest coupon, No. ——.

For 3*l.* 0*s.* 0*d.*

Half-year's interest payable on the —— day of ——, at the
—— Bank, —— Street, &c. E. F., Secretary.

(a) As to the heading of a debenture :—Very commonly the above heading is used. Sometimes several of the particulars are omitted, and occasionally words showing that the debenture belongs to a particular issue are inserted, *e.g.*, "Issue of 20,000*l.* in 2,000 debentures, of 100*l.* each, 1877." See, also, in the case of mortgage debentures, *infra*, Forms 7 & 8, and Schedule 4 to Form 10.

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Heading of debentures.

(b) The above debenture is intended to operate as a promissory note and should be stamped accordingly. See further, *supra*, p. 387, *et seq.* Until it has been decided that a company can make a promissory note under its seal (*supra*, pp. 387, 390), it seems expedient, where it is desired to issue debentures which will certainly be negotiable, to have them signed on behalf of the company, as above, instead of being "given under the common seal." See *supra*, p. 390.

Why debenture signed for company.

As a debenture in the above form will be legally negotiable, there is, of course, no need to provide that it shall be assignable free from equities, or that the receipt of the bearer shall be a good discharge, for these are incidents of a promissory note to bearer. See further, *supra*, p. 386.

A debenture so executed, will be binding on the company, assuming that it has power to issue negotiable instruments (see *supra*, p. 106) under Section 47 of the Act, and also under the Act of 1867, see *supra*, p. 15, provided, of course, that the Board authorises the execution. See further, *supra*, p. 16.

(c) It is not essential to express the consideration in a debenture, but if in any case it is deemed desirable to do so the instrument will commence as follows :—

Consideration.

"In consideration of the sum of *l.* paid to the above-named company (or to the ——— Company, Limited), by ———, of ———, the said company will, &c.;" or, "The ——— Company, Limited, in consideration of *l.* paid to it by ——— of ——— will, &c."

(d) The following form is frequently used instead of the above.

"And the said company will also pay to the bearer of every interest coupon hereto annexed, at the time and place in such coupon mentioned, such sum as in such coupon is specified." See *In re Blakely Ordnance Co.*, 3 Ch. 154.

(e) It is, perhaps, needless to say that directors signing an instrument "for" a company as above, could not be held personally liable. *Lindus v. Melrose*, 3 H. & N. 177; 27 L. J. Ex. 326; *Dutton v. Marsh*, L. R. Q. B. 364; *Aggs v. Nicholson*, 1 H. & N. 165; 25 L. J. Ex. 348, and cases cited, *supra*, p. 17.

Directors signing not personally liable.

(f) As to affixing the seal :—

Debentures are generally sealed with the common seal of the company issuing them, and it may be considered that the absence of the seal from such an instrument would be objectionable, especially as the notion that a company can only contract under seal is more or less prevalent. In order to meet this objection, it would seem expedient to affix the seal of the company to a debenture framed and executed as above.

There can be little or no doubt that the addition of the seal would not deprive the instrument of the character of a promissory note.

It is well settled that the affixing of a seal to a contract does not make it a deed if it appears that it was not intended to operate as a deed. Thus where a contract concluded with the words, "To which the parties have set their hands" (not hands and *seals*), it was held not to be a deed, although seals were set opposite the signatures. *Chambre, J.*, said that

Forms.

the putting a seal opposite the name was not to be taken as conclusive, and that the concluding words showed that the parties did not intend to execute a deed. *Clement v. Gunhouse*, 5 Esp. 83. The maxim *expressio unius est exclusio alterius* is applicable in such a case. See also *Chanter v. Johnson*, 14 M. & W. 408.

Upon similar grounds it would seem that the form of a debenture concluding as above would show clearly that the instrument was not intended to be a deed, and accordingly that the affixing of the common seal could not make it a deed. The seal will be regarded as an earmark. *Dutton v. Marsh*, L. R. 6 Q. B. 361. See also *Hayford v. Cameron's Coalbrook, &c., Co.*, 16 Q. B. 442; 20 L. J. Q. B. 160; *Aggs v. Nicholson*, 1 H. & N. 165; 25 L. J. Ex. 348; and *Balfour v. Ernest*, 5 C. B. N. S. 601; in which cases instruments executed by directors on behalf of companies were sued on as simple contracts, though the seal of the company was affixed.

As already mentioned, a debenture in the above form should be stamped as a promissory note, and the fact that it is so stamped, and is "to bearer," will go still further to show that it was not intended to be a deed, and that it was intended to be a promissory note. *Ex parte Colborne and Stranbridge*, 11 Eq. 478; *Blakely Ordnance Co.*, 3 Ch. 154; *Ex parte City Bank*, 3 Ch. 758. If the seal is to be affixed, it may be placed opposite the signatures of the directors, and the secretary can subscribe his name to an attestation clause.

DEBENTURES "TO ORDER."

Debenture
"to order."

If desired, the debenture can be made "to A. B., or to the bearer of this debenture."

Sometimes a debenture is made "to order," e.g., "to the said A. B. or order." *In re General Estates Co., Ex parte City Bank*, 3 Ch. 760; *Enthoven v. Hoyle*, 21 L. J. C. P. 100; 13 C. B. 373. But where the instrument is capable of being held to be a promissory note it seems inexpedient to make it "to order." The person to whose order it is made payable might, by indorsing the instrument, and then parting with it, unknowingly incur a serious liability; for, if it should be held to be a promissory note, he would, as indorsee, be liable to pay to the holder for the time being the monies secured thereby, if the company made default. No doubt he might avoid liability, by indorsing *sans recours*; but where an instrument purports to be a debenture, the notion that it is in truth a promissory note, might not occur to the holder.

Objection applies whether debenture signed or under seal.

This objection to making a debenture to order exists as well where the instrument is expressed to be "given under the seal of the company," as where it is signed "for" the company, as above. For as appears from the cases above mentioned (*supra*, p. 387), it is quite possible that an instrument under the seal may ultimately be held to be a promissory note. See *supra*, p. 18.

Where, however, a debenture *cannot* operate as a promissory note (*supra*, p. 390), there is not the same objection to making it "to order," for in such case the indorsee would not incur any liability.

"Undertake" or "promise" to pay.

Instead of framing the debenture as above, namely, that the company "will pay," the words "undertake to pay," *Ex parte City Bank*, 3 Ch. 153; or, "promise to pay," *Crouch v. Credit Foncier*, L. R. 8 Q. B. 374, may be used.

FORM II.

Forms.

DEBENTURE to BEARER, INTENDED to OPERATE as
PROMISSORY NOTE. NEGOTIABLE COUPONS.

The — Company, Limited.

Incorporated under the Companies Acts, 1862 and 1867.

Capital 100,000*l*.

20,000*l*. Debenture Loan, 1877.

No. — Debenture [50*l*.]

The — Company, Limited (hereinafter called the company), will on the — day of —, 18—, pay to the bearer of this debenture, at the — Bank, No. —, Lombard Street, London, or the registered office of the company, the sum of 50*l*.; and will pay interest thereon in the meantime according to the coupons annexed hereto.

IN WITNESS [*supra*, p. 424.]

Form of Coupon.

Debenture, No. —.

Interest coupon, No. —.

The — Company, Limited, will, on the — day of —, pay to the bearer at the — Bank, No. —, — Street, &c., or the registered office of the company, the sum of —*l*.

For and on behalf of the company,

C. D., Director.

The above debenture is also intended to operate as a promissory note, and the notes to Form I., *supra*, p. 425, *et seq.*, are applicable. It differs from Form I. only as regards the coupons, each of which will be a promissory note, and ought, it would seem, to be stamped accordingly.

As to the advantage of adopting this form of coupon, see *supra*, p. 420.

Forms.Negotiable
coupon.

FORM III.

DEBENTURE to BEARER to be ASSIGNABLE FREE FROM
EQUITIES.

The — Company, Limited.

[For heading, see *supra*, p. 424.]No. — Debenture, [100*l*.]

In consideration of the sum of 100*l*. paid to The — Company, Limited, by A. B., of —, the said company will, on the — day of —, 18—, pay to the said A. B., or to the bearer of this debenture, the sum of 100*l*.

And the said company will also [*supra*, p. 424, *mutatis mutandis*].

This debenture is issued subject to the following conditions:—

1. The bearer of this debenture will be entitled to the principal monies and interest hereby secured, free from any equities between the company and the said A. B., or any intermediate holder thereof.

2. The receipt of the bearer of this debenture for the principal monies intended to be hereby secured, and the receipt of the bearer of each of the said coupons for the half-year's interest therein specified, shall be a good discharge to the company, which shall not be bound to inquire into the title of the respective bearers of such instruments, or to take notice of any trust affecting such monies, or be affected by express notice of the right, title, or claim, to such monies or instruments respectively of any other person.

3. The monies intended to be hereby secured will be paid at Messrs. — & Co., No. —, Lombard Street, London, or at the registered office of the company.

Given under the common seal of the company, this — day of —, 18—.

The common seal of the company was affixed
hereto in the presence of

— }
— } Directors.

—, Secretary.



[Coupon.]

Forms.

The — Company, Limited.

Debenture, No. —.

Interest coupon, No. —.

For — l.

Half-year's interest due the — day of —, and payable at Messrs. — & Co., No. —, Lombard Street, London, or the registered office of the company.

John Smith, Secretary.

The above debenture is not intended to operate as a promissory note. It should be stamped as a debenture, *supra*, p. 421.

As to the conditions 1 and 2, see *supra*, pp. 390, 397.

And as to the effect of framing it as a representation that the company "will" pay, see *supra*, pp. 393, 400.

As appears, *supra*, pp. 391, 397, the conditions 1 and 2 might probably be omitted, for they would seem to be implied from the form of the debenture, *supra*, p. 397; but it is generally deemed better to insert them in order to avoid any doubt. It is possible that debentures so framed and stamped might be held, though under seal, to be promissory notes, *supra*, p. 387, *et seq.* And in this view some persons stamp them both as debentures and promissory notes. *Enthoven v. Hoyle*, 21 L. J. N. S. C. P. 100; 13 C. B. 373.

However, in most cases they are merely stamped as debentures; and, if it should be held that they are improperly stamped, Section 53 of the Act will enable the holder, upon paying the penalty, to get the proper stamp impressed. *Supra*, p. 423.

The insertion in the debenture of the provisions 1 & 2, would not appear to prevent the instrument from being held a promissory note, for *expressio eorum quæ tacite insunt nihil operatur*.

If desired, the debenture can be framed with coupons, as in Form II., *supra*, p. 427. In such case, the provision 2 will run thus: "The receipt of the bearer of this debenture, for the principal monies thereby secured, shall be a good discharge to the company, which shall not be bound to inquire into his title, or to take notice, &c.," [*infra*, p. 434].

FORM IV.

DEBENTURE to BEARER ASSIGNABLE FREE FROM EQUITIES.
POWER to REDEEM.

The — Company, Limited.

[For heading, see *supra*, p. 424.]

The — Company, Limited (hereinafter called the company), in consideration of the sum of 50*l.* paid to it by A. B.,

Forms. of —, will, on the — day of —, pay to the bearer of this debenture the sum of 50*l*.

And the company will also pay to the bearer of every interest coupon [*supra*, p. 425 (*d*)].

And it is hereby declared that this debenture is issued upon the terms and subject to the conditions following :—

1. The company may, upon giving not less than thirty days notice by advertisement in the Times and one other London daily newspaper, appoint an earlier day than the 1st day of May, 18—, for the redemption of this debenture.

2. If the company shall exercise the said power, it will on or at any time after the day so appointed pay to the bearer of this debenture the said sum of 50*l*., together with interest thereon for the current half-year up to the day so appointed, and also a sum of [10*l*.] by way of bonus.

As from the day so appointed for the redemption of this debenture it shall cease to carry interest.

3. Annexed to this debenture are — coupons providing for the payment on the — day of — next, and on the — day of — and — day of — in each succeeding year, of six months interest on the said sum of 50*l*. at the rate of 6*l*. per cent. per annum ; and, if this debenture shall, under condition 1, become redeemable before the said — day of —, the person presenting the same for payment must surrender therewith such of the said coupons as shall purport to be payable after the day fixed for its redemption as aforesaid.

Where a debenture is issued subject to redemption before maturity, it is well that the instrument should on the face of it bear a record of the coupons originally annexed. Of course, if at the time fixed for redemption, any of the future coupons are not forthcoming, the company can refuse to redeem or may require a proportionate allowance.

4. The bearer of this debenture will be entitled to the monies hereby secured, free from any equities between the company and the original or any intermediate holder hereof.

5. The receipt of the bearer of this debenture [*supra*, p. 428].

6. The monies hereby secured will be paid at the — Bank, No. —, — Street, London, or at the registered office of the company.

IN WITNESS whereof the said company hath caused its Forms.
common seal to be hereunto affixed, the — day of —.

[The common seal, &c.]



A. B. }
C. D. } Directors.

Countersigned,

M. N., Secretary.

The coupon will be similar to that, *supra*, p. 424.

This debenture cannot operate as a promissory note. See *supra*, p. 390.

If coupons in the form given, *supra*, p. 427, are to be used, it must be slightly modified.

FORM V.

DEBENTURE to BEARER ASSIGNABLE FREE FROM EQUITIES. HALF-YEARLY DRAWINGS and REDEMPTIONS.

The — Company, Limited.

[For heading, see *supra*, p. 424.]

The above-named company will, on the — day of —, or on such earlier day as this debenture ought to be redeemed in accordance with the conditions hereinafter mentioned, pay to the bearer of this debenture at, &c., the sum of 20*l.*; [and also, by way of bonus, the further sum of 2*l.*].

And the said company will also pay to the bearer of every interest coupon [*supra*, p. 425 (*d*)].

And it is hereby declared that this debenture is issued upon and subject to the conditions indorsed hereon.

IN WITNESS, &c. [*supra*, Form IV.].

Coupon same as at p. 424.

[*Conditions to be indorsed.*]

The conditions within referred to.

1. This debenture is one of a series of 1000 debentures of 20*l.* each, numbered 1 to 1000 inclusive, and issued or about to be issued by the within-named company.

Forms.

2. One hundred of the said debentures will be redeemed by the said company on the 1st day of November, 1877, and on each succeeding 1st day of May and 1st day of November until the whole of the said debentures have been redeemed or paid off.

The days fixed for redemption are usually the same as those fixed for payment of interest.

3. The particular debentures to be redeemed on each occasion will be determined by half-yearly drawings, which the said company will cause to be made at its registered office for the time being.

4. Such drawings will be made in the presence of a notary public of London not less than twenty-one or more than sixty days before the respective half-yearly days on which the debentures are to be redeemed.

5. Public notice of the day and time fixed for each drawing will be given by the company at least ten days previously, by advertisement in a London daily newspaper, and the bearer of this debenture will be entitled to attend at any such drawing.

6. Forthwith after each drawing, notice will be given by advertisement in a London daily newspaper of the numbers of the debentures drawn for redemption.

7. The numbers of the debentures from time to time drawn will be recorded in a book to be kept for that purpose by the directors of the said company, and to be open for the inspection of the bearer of this debenture.

8. If the bearer of this debenture shall so require, the notary public present at any such drawing as aforesaid shall make a statutory declaration as to the result thereof.

This clause is not often used.

9. As from the day fixed for the redemption of this debenture it shall cease to carry interest.

10. Annexed [*supra*, p. 430, *mutatis mutandis*].

11. The bearer [*supra*, p. 430].

12. The receipt [*supra*, p. 428].

A debenture framed as above, cannot be a promissory note. See *supra*, p. 390. It should be stamped as a debenture; see *supra*, p. 421.

FORM VI.

Forms.

DEBENTURE to BEARER. SEVERAL SERIES of DIFFERENT AMOUNTS. ANNUAL DRAWING and REDEMPTION. NEGOTIABLE COUPONS.

The — Company, Limited.

[For heading, see *supra*, p. 424.]

Sometimes it is deemed desirable to divide an issue of debentures into several classes of different amounts. Where this is the case, the form of debenture may be similar to this.

The — Company, Limited, will, on the — day of — or on such earlier day as this debenture ought to be redeemed in accordance with the conditions hereinafter referred to, pay to the bearer of this debenture at, &c., the sum of 100*l.*, and will pay interest thereon in the meantime according to the coupons annexed hereto.

This debenture is issued upon and subject to the conditions indorsed hereon.

IN WITNESS, &c. [*supra*, p. 431].

For coupon, see *supra*, p. 427.

If desired, this debenture can be assimilated to Form V., so that the common form of coupon may be used.

The conditions will be as follows.

The conditions within referred to:—

1. This debenture is one of an issue of 100,000*l.* in debentures by the within-named company. The said debentures are divided into three series, called respectively, Series A., Series B. and Series C. Series A., to which this debenture belongs, consists of 500 debentures for 100*l.* a-piece; Series B. consists of 600 debentures for 50*l.* a-piece; and Series C. consists of 1000 debentures for 20*l.* a-piece.

2. A proportionate number of the debentures of each series will be drawn for at each of the periodical drawings hereinafter provided for.

3. The sum of 10,000*l.* will be applied by the company in the redemption of debentures of the said issue on the 1st day of November, 1877, and on each succeeding 1st day of November until the whole of the said debentures shall have been redeemed or paid of.

4. The particular debentures to be redeemed on each occa-

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sion will be determined by annual drawings which the company will cause to be made at its registered office for the time being.

5. Such drawings will be made in the presence of a notary public of London not less than twenty-one, or more than sixty days before the 1st day of November in each year.

6. Public notice [*supra*, p. 432].

7. Forthwith after [*supra*, p. 432].

8. The numbers [*supra*, p. 432].

9. As from [*supra*, p. 432, *mutatis mutandis*].

10. Annexed [*supra*, p. 432].

11. The bearer [*supra*, p. 430].

12. The receipt of the bearer of this debenture for the principal monies thereby secured shall be a good discharge to the company which shall not be bound to inquire into his title or to take notice of any trust affecting such monies, or be affected by express notice of the right, title, or claim to such monies or debenture of any other person.

Such a debenture as above cannot be held to be a promissory note. See *supra*, p. 390. It should be stamped as a debenture. *Supra*, p. 422.

If it is desired in any case to make the redemption of debentures, contingent on the profits of the company, the following clauses can be introduced into the conditions, which will require to be slightly modified.

1. The said company will, on the 1st day of November, 1877, and on every succeeding 1st day of November, until the whole of the said debenture shall have been redeemed or paid off, apply a sum equal to one moiety of the net profits of the said company, for the year ending on the 30th day of June, immediately preceding such 1st day of November, in the redemption at par of so many of the said debentures as such sum shall be sufficient to redeem.

2. Nevertheless, if, in any such year, the net profits shall be less than £., there shall not be any drawing or redemption in respect of such year.

3. The certificate in writing of the auditor or auditors for the time being of the company shall, as against the bearer hereof, be conclusive evidence as to the amount of the net profits of the company in any year or of there being none. [Such a clause as this is convenient, in order to prevent disputes.]

FORM VII.**MORTGAGE DEBENTURE, ORDINARY FORM.**

The — Company, Limited.

Issue of — l. in debentures, ranking equally.

No. —. Debentures. — l.

The — Company, Limited, (hereinafter called the com-

pany,) in consideration of the sum of —l. paid to it by A. B., of —, will on, &c. [*Supra*, p. 424.] Forms.

And the said company [*supra*, p. 424].

And for the considerations aforesaid the company doth hereby charge with such payments its undertaking and all its property both present and future.

And it is hereby declared that this debenture is issued upon and subject to the following conditions :—

1. This debenture is one of a series of debentures issued or about to be issued by the company for securing an aggregate principal sum of —l., with interest at the rate of — per cent. per annum.

2. The debentures of the said series shall rank *pari passu* as a first charge upon the said property and without any preference or priority one over another.

If the debentures are to constitute a second charge, the above condition will be modified accordingly, *e.g.*, it will provide that : "The debentures of the said series shall rank *pari passu* without preference or priority, one over another, as a second charge, upon the said property ; namely, next after such of the mortgage debentures issued by the company in the year , as shall, for the time being, be outstanding." Sometimes there is a mortgage affecting part of the property charged, in which case the following proviso may be added to Condition 2 : " Provided always that so far as regards the hereditaments comprised in an indenture, dated, &c., and made, &c. (being a mortgage for securing 5,000*l.* and interest), the said debentures shall be subject to such mortgage."

3. Notwithstanding the charge hereby created, the company shall be at liberty, in the course of its business and for the purpose of continuing and carrying on the same, to use, employ, sell, lease, exchange, or otherwise deal with all or any part of the said property until default shall be made in payment of any principal monies or interest hereby secured for the period of three calendar months after the same respectively shall have become due according to the tenor of this debenture, or until the company shall by reason of its inability to meet its engagements suspend payment, or until a resolution shall be passed by the directors of the company that in their opinion the company cannot any longer continue business, or until an order of some Court of competent jurisdiction shall have been made, or a special or extraordinary resolution of the company shall have been duly passed for the winding up of the company.

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The debentures issued by *The General South American Co.*, 2 Ch. Div. 337 (*supra*, p. 405), contained clauses nearly the same as the above and the two following.

4. From and after such default, or such suspension of payment, or the passing of such resolution by the directors of the company, or the making of such order, or the passing of any such resolution of the company as above mentioned, whichever shall first happen, the liberty and authority to the company hereinbefore given shall forthwith cease and determine, and the charge by this debenture created shall and may be immediately enforceable.

5. Nothing herein contained shall be taken to authorise the creation of any mortgage or charge of or upon the said property or any part thereof having priority over the said charge.

6. The bearer [*supra*, p. 428].

7. The receipt [*supra*, p. 428].

Given, &c. [*supra*, p. 428].

For coupon, see *supra*, p. 424.

The above is a form of mortgage debenture, which, with more or less modification, is commonly issued. As to the effect of the charge, see *supra*, p. 403, *et seq.*

It is not necessary where, as above, a debenture charges both present and future property expressly to provide that the charge shall attach to the proceeds of any sale made under Condition 3. See *Wickham v. The New Brunswick and Canada Ry. Co.*, L. R. 1 P. C. 64.

Some persons prefer to enumerate some of the items of the property charged, *e.g.*: All the collieries, mining rights, buildings, plant, machinery, book-debts, credits, and monies of the company, and all other its real and personal property, both present and future.

If desired, the charge may be extended to the uncalled capital for the time being of the company, provided that there is power to charge it. See *supra*, p. 416, and *infra*, Form VIII.

Sometimes mortgage debentures contain power to redeem at any time on giving three months' notice, see *supra*, p. 430, or a power to redeem "at any time after the expiration of — years, from the date hereof."

A debenture in the above form, not being intended to operate as a promissory note, should be stamped as a debenture. See *supra*, p. 422.

If, in accordance with the plan referred to, *supra*, p. 407, the debentures are to be secured, *in part*, by a trust or covering deed, the above form will be altered, by introducing the words "not comprised in the indenture hereinafter mentioned," after the words "present and future;" and by introducing an additional condition as follows:—

8. This debenture, and the other debentures of the same series, are entitled, *pari passu*, to the benefit of an indenture, dated, &c., and made, &c., whereby certain [letters patent] and other property of the company were vested in trustees for securing the payment of the principal monies and interest payable by virtue of such debentures.

FORM VIII.

Forms.MORTGAGE DEBENTURE. HALF-YEARLY DRAWINGS.
BONUS.

The — Company, Limited.

[For heading, &c., see *supra*, p. 424.]Issue of — *l.* in mortgage debentures, ranking *pari passu*.The — Company, Limited, in consideration of the sum of 50*l.* paid to it by — of — will [*supra*, p. 431, *mutatis mutandis*].And the said company will also pay to the bearer of every interest coupon [*supra*, p. 425 (*d*)].

And for the consideration aforesaid the said company doth hereby charge with such payments the undertaking of the said company, and all the property to which it is now or shall at any time hereafter become entitled, and also its uncalled capital for the time being, and all the estate, right, title and interest of the company in to and upon the said premises.

This debenture is issued upon and subject to the conditions indorsed hereon.

IN WITNESS, &c. [*supra*, p. 431].For coupon, *supra*, p. 424.

The conditions upon which this debenture is issued :—

1. This debenture is one of a series of 2,000 debentures for 50*l.* each, numbered or to be numbered 1 to 2000 inclusive, and all in like form ; which debentures have been or are about to be issued by the within-named company.

2. One hundred of the said debentures will be redeemed by the said company on the — day of —, and on each succeeding — day of — and — day of — until the whole of the said debentures shall have been redeemed or paid off.

3. The particular debentures [*supra*, p. 432].

4. Such drawings [*supra*, p. 432].

5. Public notice [*supra*, p. 432].

6. Forthwith after each drawing notice [*supra*, p. 432].

7. The numbers [*supra*, p. 432].

[7*a.* The company may, upon the — day of —, or — day of —, in any year after the — day of —, [*say, a*

Forms. *year or two after date*], upon giving not less than thirty days notice by advertisement as aforesaid, appoint a day for the redemption of this debenture, and upon the day so appointed this debenture shall be entitled to be redeemed].

The above is sometimes inserted.

8. As from [*supra*, p. 432].

9. Annexed [*supra*, p. 430].

10. The bearer [*supra*, p. 428].

11. The receipt [*supra*, p. 428].

12. The monies intended to be hereby secured will be paid at the — Bank, Limited, — Street, London, or at the registered office of the company.

13. The said 2000 debentures will constitute a first charge upon the property of the company and its uncalled capital for the time being, and shall (save as hereinbefore provided,) rank *pari passu* without any preference or priority one over another.

14. Notwithstanding the charge created by this debenture, the said company shall be at liberty, for the purpose of continuing and carrying on its business, to use, employ, sell, lease, exchange, or otherwise deal with, all or any part of the property and premises for the time being subject to such charge, without any liability for so doing to the bearer of this debenture until default shall be made in payment of any principal monies or interest hereby secured for the period of two calendar months after the same respectively shall have become due, according to the tenor of this debenture and these conditions, or until the company shall commit a breach of any of such conditions, or until the company shall by reason, &c. [*supra*, p. 435].

15. From and after such default, or the commission of such breach, or such suspension, &c. [*supra*, p. 436].

16. Nothing in these conditions contained shall be taken to authorise the creation of any mortgage or charge of or upon the said property or any part thereof having priority over the said charge.

FORM IX.

Forms.

DEBENTURE INTENDED to OPERATE as a COVENANT.

The — Company, Limited.

[For heading, see *supra*, p. 424.]

100*l.* Debenture. 100*l.*

The — Company, Limited, in consideration of 100*l.* paid to it by A. B., of —, hereby covenants with the said A. B., his executors, administrators, and assigns, to pay to the said A. B., his executors, administrators, or assigns, on the — day of —, 18—, at the registered office or bankers of the company, the sum of 100*l.*, and to pay interest thereon, in the meantime, at the rate of — per cent. per annum, by half-yearly payments, to be made at the registered office or bankers of the company, on the — day of — and the — day of —, in each year, the first of such half-yearly payments to be made on the — day of —, 18—.

IN WITNESS whereof the said company hath caused its common seal to be hereunto affixed.

The common seal of the company was
hereunto affixed in the presence of

Seal
of the
company.

John Doe,
Richard Roe, } Directors.

Countersigned, John Smith, Secretary.

The above debenture is intended to operate as a covenant. It can seldom be deemed desirable to issue debentures so framed. For the purpose of raising money, a debenture "to bearer" is generally used. See *supra*, p. 385, *et seq.* Covenant.

And a vendor or other person agreeing to accept payment in debentures, generally stipulates that they shall be "to bearer," or, at any rate, made expressly assignable, free from equities. See *supra*, p. 37.

A debenture in the above form is only assignable, subject to equities subsisting between the company and A. B. *Athenæum Life Assurance Soc. v. Pooley*, 1 Giff. 102; 3 De G. & J. 294; *In re Natal Investment Co.*, 3 Ch. 355. Assignable only subject to equities.

An absolute assignment in writing, notice of which is given to the company, will enable the assignee to sue the company in his own name. Supreme Court of Judicature Act, 1873, Section 25, Subsection 6. See, also, *supra*, p. 400.

After notice of assignment, the company cannot set off against the assignee a debt which has accrued due to it from the assignor since the

Forms.

As to inquiry
before taking
assignment.

notice, though resulting from a contract entered into previously. *Watson v. Mid.-Wales Ry. Co.*, L. R. 2 C. P. 593.

If, before taking the assignment, the intending assignee informs the company of his intention, and, in reply to inquiries, is told by the company that the debenture is valid and the money due, the company cannot, subsequently, set up equities against the assignee. See *Brunton's Claim*, 19 Eq. 310; *Pickard v. Sears*, and other cases cited, *supra*, p. 394.

Even though no inquiry be made, if the company accept notice of the assignment, it may be held to have precluded itself from setting up equities. *Brunton's Claim*, 19 Eq. 302. So, too, if it register the assignee, and issues to him a certificate of proprietorship. *Higgs v. Northern Assam Tea Co.*, L. R. 4 Ex. 387.

FORM X.

**TRUST DEED for SECURING MORTGAGE DEBENTURES ISSUED
by a COLLIERY COMPANY. THE DEBENTURES to be RE-
DEEMED by HALF-YEARLY DRAWINGS. SPECIAL PRO-
VISIONS.**

The following precedent can be readily adapted to secure the payment of debentures not redeemable by drawings. In such case the seventh recital will be that "the directors have determined to raise the sum of

£. by the issue of debentures to that amount, bearing interest at the rate of — per cent. per annum, and to secure the principal and interest for the time being payable on such debentures, and on any debentures which may be issued to replace such of the said debentures as may hereafter fall due (all which debentures, as well original as substituted, are hereinafter referred to as the said debentures) in manner hereinafter appearing." The form of the debenture may be given in a schedule, or not at the discretion of the draftsman. It is very common to give it.

The provisions of the following precedent are more elaborate than in many cases is requisite, but the draftsman can readily expunge the clauses not required in any particular case.

Parties.

THIS INDENTURE made the — of — between The — Company, Limited, (hereinafter called the company,) of the one part and A., of —, and B., of —, of the other part.

Recitals.

WHEREAS the company is seised of the freehold hereditaments the short particulars of which are specified in the first schedule hereunder written, for an estate of inheritance in fee simple in possession, free from incumbrances; and is possessed of the several leasehold hereditaments, the short particulars of which are specified in the third column of the second schedule hereunder written, for the several terms of years specified in the second column of the same schedule, and granted by the several in-

Forms.

dentures of lease, the dates whereof and parties whereto are specified in the first column of the same schedule, at the rents and royalties, and subject to the covenants and conditions in the said several leases respectively reserved and contained, but otherwise free from incumbrances : AND WHEREAS the company is entitled to the full benefit and advantage of certain agreements, the dates whereof and parties whereto, and the short particulars of which are specified in the first and second columns respectively of the third schedule hereunder written, at the several rents (if any,) and subject to the terms and conditions in the said agreements respectively reserved and contained, but otherwise free from incumbrances : AND WHEREAS the company is possessed of other personal property of considerable value ; namely, of plant, machinery, stock-in-trade, debts, and other choses in action, monies, chattels and effects : AND WHEREAS one of the objects of the company as set forth in the memorandum of association thereof is to borrow or raise money by the issue of or upon bonds, debentures, bills of exchange, promissory notes, or obligations of the company, or by mortgage or charge of all or any part of the property of the company, or in such other manner as the company shall determine : AND WHEREAS by the articles of association of the company it is provided that the directors may from time to time, at their discretion, borrow from the directors, members, or other persons, any sum or sums of money for the purposes of the company, and may raise or secure, the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit, and, in particular, by the issue of debentures or bonds of the company, or by giving or issuing any other security of the company, or by mortgage or charge of all or any part of the property of the company, and that every debenture issued by the company may be so framed that the monies thereby secured shall be assignable free from any equities between the company and the person to whom the same may be issued : AND WHEREAS the directors of the company in exercise of their powers aforesaid have determined to borrow for the purposes of the company the sum of 100,000*l.* by the issue of 1,000 mortgage debentures for 100*l.* each, bearing interest at the rate of six per cent. per annum payable half-yearly on the 1st day of November and 1st day of May in each year, according to the coupons annexed thereto (such

Forms.	debentures and coupons respectively to be in the form set forth in the fourth schedule hereunder written,) and to further secure the principal monies and interest for the time being payable according to the tenor of the said debentures, and the performance of the stipulations and conditions therein
Testatum 1.	contained in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that for effectuating the said intention and in consideration of the premises the —
Grant of freeholds.	Company doth hereby grant unto the said A. and B., their heirs and assigns: ALL and singular the lands and hereditaments, mines, strata, veins, or seams of coal, culm, and other minerals, powers, and privileges, respectively specified or referred to in the first schedule hereunder written; TOGETHER with the messuages, engine-houses, forges, foundries, buildings, fixed engines, plant and machinery, railways, tramways, and other fixtures in or upon the said lands and hereditaments, and with all privileges, easements, franchises, advantages, rights, and appurtenances, to the said hereditaments, or any of them, appertaining or with the same or any of them, now or heretofore enjoyed or reputed as part or member thereof or appurtenant thereto; AND ALL the estate, right, title, interest, claim and demand whatsoever of the company in, to, or upon the same: TO HAVE AND TO HOLD the said hereditaments and premises hereinbefore expressed to be hereby granted unto and to the use of the said A. and B., their heirs and assigns, but upon and for the trusts and purposes hereinafter expressed concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said intention and for the consideration aforesaid, the company doth hereby demise unto the said A. and B., their executors, administrators, and assigns: ALL and singular, the lands, hereditaments, copper-works, brick-works, patent-fuel-works, mines, veins, seams, beds, and strata of coal, culm, and other minerals, powers and privileges specified or referred to in the second schedule hereunder written, with their respective rights, easements, and appurtenances: TO HAVE AND TO HOLD the said premises hereinbefore expressed to be hereby demised unto the said A. and B., their executors, administrators, and assigns, for all the respective residues now unexpired of the said several terms for which the same premises were respectively granted by the several indentures of lease mentioned in the first column
Habendum.	
Testatum 2.	
Demise of leaseholds.	
Habendum.	

of the said schedule, except the last day of each of the said terms, at the several rents and royalties thereby respectively reserved, and subject to the covenants and conditions therein respectively contained and henceforth to be observed and performed, but upon and for the trusts and purposes hereinafter expressed of and concerning the same: **AND THIS INDENTURE ALSO WITNESSETH**, that, for further effectuating the said intention and for the consideration aforesaid, the company doth hereby assign unto the said A. and B., their executors, administrators, and assigns: **ALL** and singular, the full benefits and advantages of the several agreements specified or referred to in the third schedule hereunder written, and the rights, easements, liberties, and privileges thereby respectively conferred or agreed to be granted: **AND ALL** and singular, the plant, machinery, stock-in-trade, debts, and other choses in action, monies, chattels and effects, and other personal property whatsoever and wheresoever situate, of or to which the company now is or during the continuance of this security shall become possessed or entitled; **AND ALL** the estate, right, title, interest, property, claim and demand of the company, in, to and upon the same premises: **TO HAVE AND TO HOLD** the said premises hereinbefore expressed to be hereby assigned unto the said A. and B., their executors, administrators, and assigns, as to the premises comprised in the third schedule hereto, at the rents respectively reserved by and subject to the terms and conditions contained in the said several agreements, but as to all the said premises hereinbefore expressed to be hereby assigned upon and for the trusts and purposes hereinafter expressed and declared concerning the same: **AND THIS INDENTURE ALSO WITNESSETH**, and it is hereby declared as follows:—

1. **THE** company doth hereby covenant with the said A. and B., their executors, administrators, and assigns, that the company will forthwith, at its own cost, do and perform all acts and things which may be necessary to entitle it to have granted to it the respective leases for which it has entered into the several agreements specified in the first part of the third schedule hereunder written, of the premises therein comprised respectively, and will, at its own cost, procure such respective leases to be granted accordingly, and if, when the said leases

Forms.**Testatum 3.**

Assignment
of benefit of
agreements
for leases, &c.

Habendum.**Testatum 4.**

Covenant by
company to
obtain leases.

Forms.

And vest in
trustees.

shall have been respectively granted, any principal money or interest shall remain on the security of the said debentures or of these presents will, if necessary, use its best endeavours to obtain, at its own cost, proper licenses for the purpose, and will immediately after such licenses respectively, if necessary, shall have been obtained, or if such licenses respectively shall be unnecessary, then immediately after the said intended leases respectively shall have been granted, at its own cost, well and effectually assign, or demise, or procure to be assigned or demised, the premises to be comprised in such leases respectively unto the trustees or trustee for the time being hereof, for the whole, or, at the option of the said trustees or trustee, any part of the then respective residues of the terms of years to be granted by the said intended leases respectively and with such covenants for title and otherwise, as are usual in mortgages by assignment or demise, as the case may be, or may be reasonably required, and upon the trusts and for the purposes hereinafter expressed concerning the same.

Trusts of the
mortgaged
premises.

2. THE said A. and B., their heirs, executors, administrators, and assigns, respectively shall stand seised and possessed of the said premises hereinbefore expressed to be hereby granted, demised, and assigned and covenanted to be assigned or demised respectively (hereinafter called the mortgaged premises), UPON TRUST that they the said A. and B., or the survivor of them, or the heirs, executors, or administrators respectively of such survivor, their or his assigns (hereinafter called the trustees or trustee,) shall permit the company and its assigns, to hold and enjoy all the same premises and to carry on therein and therewith the business or any of the businesses authorised by memorandum of association of the company, until default shall be made in payment of some principal monies secured by the said debentures, or in the payment of some interest on the same for the period of one calendar month after such principal monies and interest respectively shall become due according to the tenor of the said debentures and of the covenant in that behalf hereinafter contained, or until an order of some Court of competent jurisdiction shall be made, or a special or extraordinary resolution of the company be duly passed for the winding up of the company or until a distress or execution be respectively levied or sued out upon or against any of the chattels or property of the company, or

To permit
company to
retain posses-
sion until
default, &c.

until a breach of some covenant by the company hereinafter contained, shall have been committed, and from (a) and after such default, or the making of any such order, or the passing of any such resolution, or the levying or issue of any such distress or execution, or the commission of any such breach of covenant as aforesaid, and in the last-mentioned case, notwithstanding the waiver of any prior breach of covenant UPON TRUST (subject to Clause 4 hereof) that, the trustees or trustee may, in their or his discretion, without any such request as next hereinafter mentioned, and shall upon the request in writing of the holder or holders of (b) one-half of such of the said debentures as shall for the time being be outstanding or of the holder or holders of [50] at least of the said debentures, (but in either case without any further consent on the part of the company or its assigns,) enter upon and take possession of the mortgaged premises, and may, at their or his discretion, and shall upon the like request, sell, call in, collect, and convert into money the same or any part thereof, with full power to sell any of the same premises, either together or in parcels, and either by public auction or private contract, and with full power upon every such sale to make any special or other stipulations as to title, or evidence, or commencement of title or otherwise which the trustees or trustee shall deem proper, and with full power to buy in, or rescind, or vary any contract for sale of the said premises or any part thereof, and to resell the same, without being responsible for any loss which may be occasioned thereby, and with full power to compromise and effect compositions, and for the purposes aforesaid or any of them, to execute and do all such assurances and things as they or he shall think fit.

Forms.

Upon default,
&c., trustees
to enter.

When sale to
be made.

And how.

(a) The trust for entry and sale is now very generally framed as above, so as not to arise merely upon default in payment of principal or interest, but in divers other cases. See *supra*, p. 435, for another form.

(b) Sometimes the entry is to be "upon the request in writing of any holder of a debenture or debentures of the company;" but it is very usual to provide as above, so that an insignificant minority of the debenture holders may not be able to insist on that being done which the majority do not desire.

3. AFTER any sale or sales, under the aforesaid trust for sale, of any of the said premises hereinbefore expressed to be hereby demised, or which shall be demised in pursuance of the covenant in that behalf hereinbefore contained or otherwise, the

Trust of last
day of terms
on sale.

Forms.

company or its assigns shall stand possessed of the last day or other the residue, remaining in the company or its assigns, of the said respective terms or term for which the premises sold were or shall be so demised to the company as aforesaid upon trust for the purchaser or purchasers of the same premises, and to assign and dispose of the same as such purchaser or purchasers shall direct.

What notice
to be given
before sale, &c.

4. BEFORE making any such entry as aforesaid, or any sale, calling in, collection, or conversion under the aforesaid trust in that behalf (hereinafter referred to as the primary trust for conversion,) the trustees or trustee shall, except in the case of such order or resolution as aforesaid having been made or passed, give written notice of their or his intention to the company, and shall not enter upon the mortgaged premises or execute the primary trust for conversion, if in the case of such trust arising by reason of any default in payment of any principal money or interest, the directors shall prove to the trustees or trustee payment of the principal or interest so in arrear within three calendar months next after such notice shall have been given to them, or if in the case of such trust arising by reason of any such distress, execution, or breach of covenant as aforesaid, the company shall forthwith, upon such distress or execution being levied or sued out, or upon such notice as aforesaid being given, remove, discharge, or pay out such distress or execution, or fully perform the covenant so broken, if capable of then being performed, or make good the breach thereof to the satisfaction of the trustees or trustee.

Provision for
protection of
purchasers,
&c.

5. PROVIDED always, that upon any sale, calling in, collection or conversion purporting to be made in pursuance of the primary trust for conversion, the purchaser or purchasers, or debtor or debtors, as the case may be, shall not be bound to see or inquire whether any such notice has been given, or whether any default has been made by the company in payment of any principal monies or interest secured by any of the said debentures, or whether any such order, resolution, distress, execution, or breach of covenant as aforesaid, has respectively been made, passed, levied, issued or committed, or whether any money remains on the security of these presents, or as to the necessity or expediency of the stipulations and conditions subject to which any such sale shall have been made, or otherwise as to the propriety or regularity of such sale,

Forms.

calling in, collection or conversion, and notwithstanding any impropriety or irregularity whatsoever in any such sale, calling in, collection or conversion, the same shall, (so far as regards the safety and protection of the purchaser or purchasers, debtor or debtors, as the case may be,) be deemed to be within the primary trust for conversion and be valid and effectual accordingly, and the remedy of the company and its assigns in respect of any impropriety or irregularity whatsoever in the execution of the primary trust for conversion shall be in damages only.

6. UPON any such sale, calling in, collection or conversion as aforesaid, the receipt of the trustees or trustee for the purchase money of the premises sold, and for any other monies paid to them or him, shall effectually discharge the purchaser or purchasers, or other person or persons paying the same therefrom, and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

Trustees' receipt.

7. THE trustees or trustee shall hold the monies to arise from any sale, calling in, collection, or conversion under the primary trust for conversion upon trust, that they or he shall thereout, in the first place, pay or retain the costs and expenses incurred in or about the execution of such trust or otherwise in relation to these presents, and shall apply the residue of the said monies (a), First, in or towards payment to the holders of such of the said debentures as shall for the time being be outstanding, *pari passu* in proportion to the amount due to them respectively, and without any preference or priority whatsoever, of all arrears of interest remaining unpaid on such debentures; Secondly, in or towards payment to the holders of such debentures, *pari passu* in proportion to the amount due to them respectively, and without any preference or priority either on account of priority of issue, or of any debenture having been drawn for redemption or otherwise howsoever, of all principal monies due on such debentures, and that whether the same principal monies shall or shall not then be payable according to the tenor of the said debentures, and, Thirdly, shall pay the surplus (if any) of such monies to the company or its assigns.

Trusts of proceeds of sale, calling in, &c.

(a) It is sometimes provided that out of the net proceeds of sale the monies secured by the debentures due at the time of sale, shall first be paid, and that the residue shall be invested, and the income and capital

Forms.

applied in keeping down the interest on the outstanding debentures, and paying off the debentures from time to time arriving at maturity, with power for the trustees, at the request of any debenture holder, to pay him off before his debenture arrives at maturity, and that the surplus shall be held in trust for the company. In such case, a proviso is added, that if the net proceeds of sale shall be insufficient to pay the debentures due and to provide a sufficient fund for payment of those not due, the same shall be apportioned among the holders of the debentures as provided by the above clause. See Davidson's Precedents, Vol. II. Part II., p. 1232.

Power to withhold payment until sufficient fund to pay 10% per debenture.

8. PROVIDED always, that if the amount of the monies at any time apportionable under Clause 7 hereof, shall be less than 10% per debenture, the trustees or trustee may, at their or his discretion, invest such monies upon some or one of the investments hereinafter authorised, with power from time to time at the like discretion to vary such investments, and such investments, with the resulting income thereof, may be accumulated until the accumulations, together with any other funds for the time being under the control of the trustees or trustee, and applicable for the purpose, shall amount to a sum sufficient to pay 10% per debenture upon such of the said debentures as shall be outstanding, and then such accumulations and funds shall be applied in manner aforesaid.

Notice of apportionments to be given.

9. THE trustees or trustee shall give not less than seven days notice by advertisement in the *Times*, and at least one other daily London newspaper, of the day fixed for any payment to the holders of debentures under Clauses 7 or 8 hereof, and after the day so fixed and advertised the holder of each outstanding debenture shall be entitled to interest on the balance only (if any) of the principal monies due on such debenture after deducting the amount (if any) payable in respect thereof on the day so fixed.

Receipt of bearer of debentures or coupon to be a good discharge.

10. THE receipt of the holder of each of the said debentures for the principal monies and interest intended to be thereby secured, shall be a good discharge to the trustees or trustee, and they or he shall not be under any obligation to inquire into his title or [*supra*, p. 434.]

Indorsement to be made on debentures upon part payment.

11. UPON any payment under Clauses 7 and 8 hereof respectively, to the holder of a debenture on account of the principal monies or interest thereby secured, the debenture shall be produced to the trustees or trustee, who shall cause a memorandum of the amount and date of payment to be indorsed thereon.

12. At any time before the primary trust for conversion shall have arisen, or be capable of being presently executed, the trustees or trustee may, upon the application and at the cost of the company, acquire or concur in acquiring a new or renewed lease, or new or renewed leases, of all or any of the said premises hereinbefore expressed to be hereby demised or covenanted to be demised respectively, for such term or respective terms, not being less than the then respective residues of the said now existing terms, or the terms to be created as aforesaid, in the same hereditaments respectively, and at such rents and royalties, and subject to such covenants and conditions, as they or he shall think fit; AND for that purpose may surrender or concur in surrendering the then existing lease or leases of the same hereditaments respectively and the terms therein as aforesaid; AND any such new or renewed lease may be granted either to the trustees or trustee, or to any nominee or nominees of the company, but so that in the latter case the lessees or lessee do execute a declaration of trust for the company subject to the provisions of these presents; AND every such new or renewed lease and the premises comprised therein and the term thereby granted shall become and be in all respects subject to the trusts and provisions herein contained, as though the interest of the company therein had been hereby assured to the trustees.

13. At any time before the primary trust for conversion shall have arisen, or be capable of being presently executed, the trustees or trustee may upon the like application and at the cost of the company sell, call in, and convert, or concur in selling, calling in, or converting, all or any of the mortgaged premises in the same manner as they or he could do if the primary trust for conversion had then arisen, and shall hold the net proceeds to arise from any sale calling in and conversion under the power in that behalf in this clause contained, upon trust to lay out the same or any part thereof if they or he shall think fit in the construction, erection, or improvement of any railways, tramways, buildings, works, or erections of a fixed or permanent nature, suitable for the purposes of the company, and so as to constitute a permanent improvement of the remaining property of the company, or in the purchase of other hereditaments suitable to be held in connection with such other property, or in the purchase of

Forms.

Power for trustees before trust for sale arises to surrender leases.

And to concur in selling.

How proceeds to be employed.

<u>Forms.</u>	machinery, chattels, or effects necessary or convenient for the purposes of the company, or otherwise to apply the same in such manner as the trustees or trustee may think calculated to promote the interests of the company, and so that the site of any such railways, tramways, buildings, works, or erections, if not already comprised in these presents, and any hereditaments so purchased shall be conveyed or assured in such manner as the trustees or trustee shall require, so as to become subject to all the trusts, powers, and provisions herein contained; AND until any such investment as aforesaid the trustees or trustee shall invest the same net proceeds upon some or one of the investments hereinafter authorised with power from time to time at their or his discretion to vary such investments, and with power (until the primary trust for conversion shall arise) to resort to any such last mentioned investments for any of the purposes for which such proceeds are first hereinbefore authorised to be expended; AND subject as aforesaid the trustees or trustee shall stand possessed of the said investments upon trust, until the primary trust for conversion shall arise, to pay the income thereof to the company or its assigns, and after the primary trust for conversion shall have arisen shall hold the said investments and the income thereof respectively upon and for the trusts and purposes hereinbefore expressed concerning the monies to arise from any sale, calling in, and conversion, under the primary trust for conversion. Provided always that in default of such trust for conversion arising and after payment and satisfaction of all monies intended to be secured by these presents the said investments and the income thereof shall be held in trust for the company or its assigns.
Interim investments.	
Trusts of investments.	
Power for trustees after entry to carry on business, &c.	14. AFTER the trustees or trustee shall have entered upon and taken possession of the mortgaged premises and until the whole of the same premises shall be sold, called in, collected, and converted under the primary trust for conversion, the trustees or trustee may if they or he shall think fit so to do, but not otherwise, carry on the business of the company in and with the mortgaged premises or any of them, and may manage and conduct the same as they or he shall in their or his discretion think fit, and for the purposes of the said business may employ such agents, managers, receivers, accountants, servants, and workmen upon such terms as to
And carry on business.	

remuneration and otherwise as they or he shall think proper, and may renew such of the said plant, machinery, and effects as shall be worn out or lost, or otherwise become unserviceable, and generally may do or cause to be done all such acts and things, and may enter into such arrangements respecting the said premises or the working of the same or any part thereof as they or he could do if they or he were absolutely entitled thereto, and without being responsible for any loss or damage which may arise or be occasioned thereby; AND may also, at their or his discretion, demise or let the mortgaged premises, or any part thereof, upon such terms and subject to such stipulations as the trustees or trustee shall think fit; PROVIDED always that the trustees or trustee shall, by and out of the rents and profits and income of the same premises, and the monies to be made by them or him in carrying on the said business, pay and discharge the expenses incurred in and about such management, or in the exercise of any of the powers aforesaid or otherwise in respect of the premises, and all outgoings which they or he shall think fit to pay, and shall pay and apply the residue of the said rents, profits, and monies in the same manner as is hereinbefore provided with respect to the monies to arise from any sale, calling in, and conversion under the primary trust for conversion.

Forms.

And to let on lease.

How returns to be applied.

15. ANY monies which, under the trusts herein contained, ought to be invested, may be invested in the names or name or under the legal control of the trustees or trustee in any of the public stocks, or funds, or Government securities of the United Kingdom, or in stock of the Bank of England [or may be placed on deposit in the names or name of the trustees or trustee in such bank or banks as they or he may think fit].

Investment clause.

16. THE company doth hereby covenant with the said A. and B., their executors, administrators, and assigns, as follows:—FIRST, that on the 1st day of November, 1877, and on each succeeding 1st day of May and 1st day of November until the whole of the said debentures shall have been redeemed or paid off the company will redeem 50 of the said debentures; AND that the particular debentures to be redeemed on each occasion shall be determined by half-yearly drawings which the company will cause to be made at its registered office for the time being; AND that such drawings shall be made in the presence of a notary public of London not

Covenants by company:—
1. For redemption of debentures by half-yearly drawings.

Forms.

less than 21 or more than 60 days before the respective half-yearly days on which the debentures are to be redeemed ; AND that the company will cause public notice of the day and time fixed for each drawing to be given at least 10 days previously by advertisement in a London daily newspaper ; AND will permit the respective holders of the said debentures or any of them to attend at any such drawing ; AND will forthwith after each drawing cause notice to be given by advertisement in a London daily newspaper of the distinguishing numbers of the debentures drawn for redemption ; AND that the numbers of the debentures drawn shall be recorded in a book to be kept for that purpose by the directors of the company ; AND that such book shall be open for inspection by the trustees or trustee and by the bearer of any debenture for the time being outstanding on the security hereof ; AND that upon, or at any time after the day on which each of the said debentures shall be entitled to be redeemed in accordance with the covenant hereinbefore contained the company will pay to the bearer of such debenture the principal sum of 100*l.* intended to be thereby secured, and also a sum of 10*l.* by way of bonus : **SECONDLY**, that the principal monies and interest intended to be secured by the said debentures shall be a first charge on the mortgaged premises, and that the said principal monies and interest shall take precedence over all monies which may hereafter be raised by the company by any means whatsoever ; and that as between the several holders thereof (except as herein otherwise provided) the said debentures shall rank *pari passu* without any preference or priority by reason of date of issue or otherwise ; AND further, that the company or its assigns will at all times keep an accurate register of all such of the said debentures as shall, for the time being, be outstanding, showing the number and amount of each debenture and the date of issue ; and that the trustees or trustee and the holders of the said debentures, or any of them, shall be at liberty at all reasonable times to inspect the said register, and to take copies of, or extracts from, the same, or any part thereof : **THIRDLY**, that the company will, during the continuance of this security, carry on and conduct the business of the company to the greatest possible advantage ; AND will keep proper books of account and therein make true and perfect entries of all dealings and transactions of or in

2. Debentures to be a first charge, and to rank *pari passu*.

3. Business of company to be carried on effectually. accounts to be kept ;

relation to the said business ; and that the said books of account and all other documents relating to the affairs of the company shall be kept at the registered office of the company, or other place or places where the said books of account and documents of a similar nature have heretofore been kept, and that the same shall at all reasonable times be open for the inspection of the trustees or trustee, and such person or persons as they or he shall from time to time in writing for that purpose appoint ; AND that the company will at all times during the continuance of this security give to the trustees or trustee, or to such person or persons as aforesaid, such information as they, or he, or any of them shall require as to all matters relating to the said business or any after acquired property of the company, or otherwise relating to the affairs thereof ; AND will not pull down or remove any dwelling houses, storehouses, stations, enginehouses, buildings, erections, furnaces, forges, foundries, gins, railways, tramways, wharfs, on the hereditaments for the time being subject to this security, nor the fixed engines, steam engines, plant, machinery, fixtures, and fittings annexed to the same respectively, or any of them, without the previous consent in writing of the trustees or trustee, except in any case where such pulling down or removal shall be rendered necessary by any of the last-mentioned premises being worn out or injured, and in such cases will replace the premises so worn out or injured by others of a similar nature and of at least equal value ; AND will, when necessary, renew and replace all moveable engines, plant, machinery, tools, implements, utensils, and other effects of a like nature now used or hereafter to be used for the purpose of or in connection with the business of the company, when and as the same shall be worn out or destroyed ; AND will keep the said hereditaments and all plant, machinery, works, fixtures, fittings, implements, utensils, and other effects therein or upon the same respectively, and used for the purpose of or in connection with the said business and every part thereof in a good state of repair and in perfect working order and condition ; AND will permit the trustees or trustee, and such persons as they or he shall from time to time in writing for that purpose appoint to enter into and upon the same hereditaments respectively to view the state and condition thereof, and of all plant, machinery, works, fixtures, fittings, implements, utensils,

Forms.

and to be
open for in-
spection.

Buildings,
&c., not to be
pulled down.

Renewal of
machinery.

Premises to
be kept in
repair ;

Forms. and other effects then in or upon the same respectively, and used for the purpose of or in connection with the said business ;
 and insured. AND also will insure and keep insured such of the mortgaged premises as are of an insurable nature against loss or damage by fire in their full value, in such office as the trustees or trustee shall for that purpose appoint, and will duly pay the premiums and other sums of money payable for that purpose, and immediately after every such payment deliver (if required) to the trustees or trustee the receipt for the same ; and will apply all monies to be received by virtue of any such policy in making good any loss or damage which may so arise to the said premises or any of them ; AND that if default shall be made in keeping the said premises in a good state of repair, and in perfect working order and condition, or so insured as aforesaid, or in delivering any such receipt as aforesaid, the trustees or trustee may repair the said premises or such of them as shall in their opinion require reparation, and may insure and keep insured the said premises or such of them as they may deem fit, and that the company will on demand repay to the trustees or trustee every sum of money expended for the above purposes or any of them, by them or him, with interest at the rate of 10 per cent. per annum, from the time of the same respectively having been expended, and that until such repayment the same shall be a charge upon the mortgaged premises.

Power in default for trustees to repair and insure.

Power to dis-train granted to trustees.

17. THE company doth hereby grant to the trustees or trustee that, as often as it shall happen, (whilst the company shall be in possession of the said premises), that interest to the amount of [500*l*.] on the said debentures or any of them shall be in arrear for twenty-one days after the same shall have become due, according to the tenor of the same debentures it shall be lawful for the trustees or trustee (but not incumbent or obligatory on them or him unless 10 per cent. at least of the whole amount of the interest of the said debentures for the time being outstanding shall be in arrear and unpaid) into and upon the hereditaments for the time being subject to this security, or any part thereof, to enter, and to distrain for the interest and the arrears thereof due on the said debentures or debenture, and the costs and expenses of the trustees or trustee incurred by the non-payment thereof, and to dispose of the distress or distresses then and there

found according to law, as landlords may for rents reserved upon leases, to the intent that thereby and therewith the said arrears of interest and all costs and expenses of the trustees or trustee incurred by the non-payment thereof, and in making such distraint, may be paid and satisfied.

18. THE company doth hereby covenant with the said A. and B., their heirs, executors, administrators, and assigns, that the said indentures of lease and agreements, referred to in the schedules hereto, are respectively good, valid, and effectual leases and agreements, and are respectively in full force, unforfeited, and unsurrendered, and in nowise void or voidable; AND that all and singular the rents, royalties, rates, covenants, conditions, and stipulations in and by the said indentures of lease and agreements respectively reserved and contained, and on the part of the lessees, tenants, or grantees respectively, to be paid, observed, and performed have been paid, observed, and performed up to the date hereof; AND that the company now has good right and full power to grant the said hereditaments and premises hereinbefore expressed to be hereby granted to the use and in manner aforesaid; AND that the company now has good right and full power to demise the said hereditaments and premises hereinbefore expressed to be hereby demised unto the, said A. and B., their executors, administrators, and assigns, for the terms and in manner, and subject as aforesaid, and to assign the said premises hereinbefore expressed to be hereby assigned in manner and subject as aforesaid; AND that all the said premises may be quietly entered into, held, and enjoyed accordingly by the trustees or trustee without any interruption by any person; AND that free and discharged or otherwise by the company and its assigns, sufficiently indemnified from and against all estates, incumbrances, claims, and demands whatsoever, except as hereinbefore mentioned; AND moreover, that the company and its assigns and every other person having, or lawfully or equitably claiming, any estate, right, title, interest, property, claim and demand of, in, or to the said premises, or any of them, or any part thereof respectively, shall and will, from time to time and at all times, upon the request of the trustees or trustee, but at the cost of the company or its assigns, execute and do every such assurance and thing as by the trustees or trustee shall be reasonably required for the further or more perfectly as-

Forms.

Covenants by company that leases and agreements valid;

—that rents and covenants have been paid and performed;

—for right to convey freeholds,

and to demise leaseholds,

and to assign other premises;

—for quiet enjoyment;

—free from incumbrances;

and for further assurance;

Forms.

—for payment
of rents and
performance
of covenants ;

—for payment
of salary to
trustees ;

—special in-
demnity to
trustees.

sureing the said premises and every part thereof to the use of or unto the said A. and B., their heirs, executors, administrators, and assigns respectively, according to the nature of the property, and upon the trusts, and with and subject to the powers and provisions herein declared and contained, or as near thereto as circumstances will permit.

19. AND the company doth hereby covenant with the said A. and B., their heirs, executors, administrators, and assigns, that the company or its assigns shall and will, from time to time, and at all times so long as any money shall remain on the security of these presents, pay, observe, and perform, or cause to be paid, observed, and performed, all and singular the rents, royalties, rates, covenants, conditions, and stipulations in and by the said indentures of lease and agreements respectively reserved and contained, and on the part of the lessees, tenants, or grantees respectively, to be paid, observed, and performed, and shall and will keep the said A. and B., and each of them, their and each of their heirs, executors, administrators, and assigns, and the trustees or trustee for the time being of these presents, indemnified from and against all actions, suits, proceedings, costs, charges, damages, claims, and demands whatsoever, which shall or may be incurred or sustained by reason or on account of the nonpayment, non-observance, or non-performance of the same rents, royalties, rates, covenants, conditions, and stipulations, or any of them ; AND that the company will, in each and every year during the continuance of this security, pay to each of the trustees for the time being of these presents, as and by way of remuneration for his services as trustee, the sum of [100*l*.] by equal half-yearly payments, on the — day of June and — day of December in each such year, in addition to all travelling and other costs, charges, and expenses which he may incur in relation to the execution of the trusts hereby in him reposed, and also (in addition to the ordinary right to indemnity by law given to trustees) will at all times hereafter keep indemnified the said trustees and each of them, and their and his heirs, executors, and administrators, estates, and effects, from and against all actions, proceedings, costs, charges, claims, and demands whatsoever, which may arise or be brought or made against them or him in respect of the execution of the trusts hereof, or in respect of any matter or thing done or omitted

(without their or his own wilful default) with respect or relating to the premises ; Provided always that the trustees or trustee may retain or pay to themselves or himself, out of any monies in their or his hands upon the trusts of these presents, the amount of any such remuneration as for the time being may be due to them or him, or of any such monies, costs, charges and expenses, claims or demands, as aforesaid.

20. It shall not be incumbent on the trustees or trustee to give notice to any person or persons of the assignment hereinbefore contained of choses in action belonging to the company unless and until the primary trust for conversion shall have arisen, and the trustees or trustee shall have determined to execute the same, and they or he shall not be deemed to commit a breach of trust or incur any liability whatsoever by neglecting or omitting so to do.

21. Upon the appointment of a new trustee or new trustees hereof under the statutory power the number of trustees may be augmented or reduced provided that the number after each such appointment shall not exceed four, or be less than two (*d*).

(*d*) Sometimes a full power to appoint new trustees is inserted. Occasionally the power is vested in the company, and sometimes in the debenture holders. In the latter case it is usual to insert clauses enabling the trustees, or in default a specific proportion of the debenture holders, to call meetings of the debenture holders, with proper provisions as to notices, election of chairman, resolutions, minutes, &c.

IN WITNESS, &c.

THE SCHEDULES REFERRED TO IN THE FOREGOING INDENTURE.

FIRST SCHEDULE.

PARTICULARS OF FREEHOLD PROPERTY.

First.—All and singular, the strata, mines, veins, or seams of coal, culm, and other minerals, in and under all those pieces or parcels of land, situate in the parish of —, in the county of —, particularised in the schedule to an indenture, dated, &c., and made, &c., and delineated on the plan drawn on the back of the — skin of such indenture, and thereon coloured red, containing, by admeasurement,— acres, or thereabouts.

Forms.

Power for trustees to retain salary and outgoings.

Notice of assignment of choses in action need not be given.

Forms.

Secondly.—All and singular the messuages or tenements, and pieces or parcels of land and hereditaments, situate in the parish of — in the county of —; the particulars whereof are set forth in the subjoined tabular statement, and all other the hereditaments (if any) comprised in an indenture, dated, &c., and made, &c.

Number on plan is lodged on skin of the said in- denture of the day of	Names of fields and other descriptions.	State.	Quantity.		
			a.	r.	p.
2	Beeton's meadow . . .	Pasture .	2	1	1
3	Cottage, garden, &c. . .	—	—	2	1
&c.	&c.				

Thirdly, &c.

Fourthly, &c.

Fifthly, &c.

SECOND SCHEDULE.**PARTICULARS OF LEASEHOLD PROPERTY.**

Date and parties to indenture of lease.	Terms.	Description.
Indenture, dated 21 July, 1863, and made be- tween, &c.	Thirty years from 1 July, 1863, deter- minable, as in the said lease mentioned.	All the mines, veins, and seams of coal, situate, lying, and being in, and under all those several pieces or parcels of land, containing together 117 A., 1 R., 17 P., situ- ate, &c., which were demised by the indenture of the 21st July, 1863, in the first column of this schedule mentioned, and are delineated on the plan drawn on the last skin of the same inden- ture, with certain powers, rights, liberties, and easements therein referred to, and all other (if any) the premises comprised in and demised by the same indenture.
Indenture, dated, &c., and made, &c.	Twenty-one years from, &c., determin- able, &c.	All those mines, &c.
&c., &c.	&c., &c.	&c., &c.

THIRD SCHEDULE.

Forms.

FIRST PART.

AGREEMENTS FOR LEASES.

Date of and parties to agreements.	The purport and effect of the agreements.
27 March, 1873, between N. of the one part, and the company of the other part.	N. thereby agreed to grant to the company a lease of, &c.
1 September, 1874, between, &c. &c., &c.	P. and D. thereby agreed to grant to the company a lease of, &c. &c., &c.

SECOND PART.

OTHER AGREEMENTS.

Date of and parties to agreements.	The purport and effect of the agreements.
1 August, 1874, between, &c.	H. D. thereby agreed to grant to the company a way-leave for ever over a certain tram-road, &c.
10 September, 1874, between, &c.	It was thereby agreed between — and the company that it should be lawful for the company to erect a bridge, &c.
17 August, 1874, between, &c.	G. thereby agreed to grant to the company a licence to use certain inventions, the subject of the following letters patent, namely, &c.

FOURTH SCHEDULE.

[FORM OF DEBENTURE.]

The — Company, Limited.

Incorporated under the Companies Acts, 1862 and 1867.

Capital — £.

Issue of 100,000£ in mortgage debentures, ranking, *pari passu*, as a first charge.

No. —

Debenture

[100£.]

In consideration of the sum of 100£. paid to The — Company, Limited, by —, of —, the said company, will, on the 1st day of May, 1887, or on such earlier day as this debenture ought to be redeemed in accordance with the conditions hereinafter mentioned, pay to the bearer of this debenture, at the — Bank, No. —, — Street, in the City of London, or at the registered office of the company, the sum of 100£., and also by way of bonus the further sum of 10£.

Forms.

And the said company will also pay to the bearer of every interest coupon hereto annexed at the time and place in such coupon mentioned, such sum as in such coupon is specified.

And it is hereby declared that this debenture is issued upon and subject to the conditions indorsed hereon.

Given under the seal of the company, this 1st day of May, 1877.

Form of Coupon.

The — Company, Limited.

Mortgage debenture, No. —.

Interest coupon, No. —.

For 3*l.* 0*s.* 0*d.*

Half year's interest, payable on the — day of —, at the — Bank,
— Street, &c.

E. Z., Secretary.

[Conditions to be Indorsed.]

THE CONDITIONS WITHIN REFERRED TO.

1. This debenture is one of a series of 1000 debentures for 100*l.* each, numbered 1 to 1000 inclusive, and issued or about to be issued by the within named company.

2. Fifty of the said debentures will be redeemed by the said company on the 1st day of November, 1877, and on each succeeding 1st day of May, and 1st day of November, until the whole of the said debentures have been redeemed or paid of.

3. The particular debentures [*supra*, p. 432].

4. Such drawings [*supra*, p. 432].

5. Public notice [*supra*, p. 432].

6. Forthwith after [*supra*, p. 432].

7. The numbers [*supra*, p. 432].

8. As, from the day fixed for the redemption of this debenture, it shall cease to carry interest.

9. Annexed [*supra*, p. 430, *mutatis mutandis*].

10. The bearer [*supra*, p. 428].

11. The receipt [*supra*, p. 428].

12. The holders of this debenture and the other debentures of the same series are entitled, *pari passu*, to the benefit of an indenture, dated the — day of —, and made between the said company of the one part, and A. and B. of the other part, whereby certain collieries and other property (present and future) of the company were vested in trustees, for securing the payment of the principal monies and interest payable by virtue of such debentures, and the performance of the stipulations therein contained.

FORM XI.

PROSPECTUS OF ISSUE OF DEBENTURES.

The following skeleton prospectus may be found of some use by way of reminder.

The — Company, Limited.

Issue of 10,000*£* six per cent. debentures of 50*£* each, to be paid off 1st February, 1881.

[Here the names of the directors and other officers of the company are usually given.]

Subscriptions [*or applications*] are invited for 10,000*£* in 6 per cent. debentures of 50*£* each. These debentures are issued in order to provide funds for, &c.

The Company [*position and prospects*].

The debentures will be issued at par for sums of 50*£* each, made payable "to bearer," and carrying interest from the — day of —, at the rate of 6 per cent. per annum, payable half-yearly, on the —th of — and —th of —, at the bankers of the Company, upon presentation of coupons annexed to the debentures.

The terms of subscription for each debenture are as follows:—

On application	10 <i>£</i> .
On allotment	10 <i>£</i> .
On the —th June, 18—	10 <i>£</i> .
On the —th July, 18—	10 <i>£</i> .
On the —th July, 18—	10 <i>£</i> .

Provisional certificates will be issued on payment of the amount due on allotment, and exchanged for definitive debentures on completion of the payments.

[For form of certificate, see *infra*, p. 463.]

Instalments may be paid in advance, on allotment, or on any of the above dates, under discount at the rate of — per cent. per annum. Where no allotment is made the deposit will be returned in full.

In case a less number of debentures is allotted than is applied for, the excess of the deposit will be applied in or towards payment of the future instalments due upon such number as may be allotted. Failure to pay any instalment when due, will render the allotment liable to cancellation, and the previous payments to forfeiture.

Forms.

Applications in the annexed form should be filled up and sent to the company's bankers, Messrs. —, accompanied by a deposit of 10*l.* upon each debenture applied for.

The form of debenture can be seen at the office of the company.

By order of the Board of Directors.

—, Secretary,

No. —, — Street, London, E.C., January 1st, 1876.

[Form of letters of application to be subjoined to prospectus.]

No. —

The A. Company, Limited.

Issue of 10,000*l.* six per cent. debentures.

To the directors of the A. Company, Limited.

Gentlemen,

I beg to apply for debentures of the above issue in the terms of the prospectus issued by you, dated, &c., on which I have paid the required deposit of 10*l.* per debenture; and I undertake to accept the same or any less number you may allot to me, and to make the remaining payments in respect thereof* at the dates specified in the said prospectus.

Your obedient servant,

Names —

Address —

Occupation —

Date —

* If you desire to pay in full on allotment, the words "the dates specified in the said prospectus" should be struck out, and the words "on allotment under discount" substituted.

FORM XII.

PROVISIONAL CERTIFICATE OF TITLE TO DEBENTURES.

The following is a provisional certificate in the ordinary form. It is a negotiable instrument by the law merchant. *Rumball v. Metropolitan Bank*, 2 Q. B. Div. 194.

The — Company, Limited.

Capital £—.

Bankers, —.

Offices, —

Issue of 10,000*l.* 6 per cent. debentures of 50*l.* each.

PROVISIONAL CERTIFICATE.

Forms.

No. —

For — debentures to be numbered — to — inclusive.

THIS IS TO CERTIFY that the above-named company have received the sum of 20%. upon each of the said — debentures, and that on payment of the remaining instalments as below mentioned, the bearer will be entitled to receive — debentures of the said issue, each for 50%.

The remaining instalments on each debenture are to be paid at the bankers of the company as follows :—

On the —th June next 10% per debenture.

On the —th July next 10% per debenture.

On the —th July next 10% per debenture.

Failure to pay any instalment when due will render the previous payments liable to forfeiture.

The remaining instalments may be paid in full under discount at the rate of — per cent. per annum on any day on which an instalment falls due.

For the company,

London,

—, Secretary.

— Street, E.C., 1st —, 1877.

Annexed to the above certificate, will be receipts for future instalments, as follows.

RECEIVED on account of The — Company, Limited, the sum of £—, being the instalment due in respect of the debentures above-mentioned upon the —th June, 18—.

For the — Bank.

—, Cashier.

London, —th —, 1877.



To be retained by the bankers.

The — Company, Limited. Amount payable in respect of — debentures specified in Provisional Certificate, No. —.

£ —.

Paid the —th June, 1877.

FORM XIII.

ADVERTISEMENTS OF DRAWINGS.

The — Company, Limited.

Drawing of 6 per cent. debentures issued in July, 1875. Notice is hereby given, that the undermentioned debentures were this day drawn in accordance with the conditions indorsed thereon at the offices of the company in the presence of — and —, directors of the company, and of Mr. — (notary

Forms. public), and will be paid at par on and after the — day of — next, between the hours of 10 A.M. and 4 P.M., at the bank of Messrs. —, Lombard Street, E.C., with the interest then due, on presentation of the debenture with the remaining coupons :—

Numbers of debentures drawn—

101	400	692
210	481	696
240	488	740
390	602	806

N.B. Interest on the above debentures will cease on the — day of — next.

By order,

—, Secretary.

No. —, — Street, —, 1st May, 18—.

FORM XIV.

Another Form.

The — Company, Limited.

Fifth half-yearly drawing in respect of the issue of £— debentures of 18—. Notice is hereby given that the 250 debentures amounting in the aggregate to 7,000*l.*, the numbers and amounts of which are hereunder specified, were this day drawn in accordance with the conditions indorsed thereon, and will be paid off at par at the — Bank, Limited, No. — Threadneedle Street, E.C., on and after the day of next.

DEBENTURES DRAWN.

10 Debentures of 100 <i>l.</i> each (Series A.) . . .	1,000 <i>l.</i>
[Here give the numbers.]	
40 Debentures of 50 <i>l.</i> each (Series B.) . . .	2,000 <i>l.</i>
[Here give the numbers.]	
200 Debentures of 20 <i>l.</i> each (Series C.) . . .	4,000 <i>l.</i>
[Here give the numbers.]	

Total . 7,000*l.*

Present —, Notary Public.

—, Secretary.

No. — Street, &c., E.C., 10th June, 18—.

FORM XV.

**TRUST DEED for SECURING MORTGAGE DEBENTURE STOCK
ISSUED by a COMPANY INCORPORATED UNDER the ACTS
OF 1862 and 1867.**

Forms.

Until quite recently companies registered under the Acts of 1862 and 1867, seldom or never issued mortgage debenture stock. It is, however, a convenient mode of raising money, and is gradually being adopted.

The following precedent will show how the stock should be secured, and also how the conditions of issue should be framed.

Of course, instead of making the stock redeemable at the end of ten years, the period can be extended to fifteen or twenty years; or the stock may be made a "perpetual mortgage debenture stock." The advantage which such a stock possesses over preference shares is that it gives the holder a first charge on the assets as against other creditors, whereas the holders of preference shares can, at the utmost, only be given a preference in the distribution of surplus assets *after* payment of all creditors.

It may be made a condition of issue if desired that the company shall have power to redeem the stock or any part of it on giving six months' notice.

A company which has debentures outstanding, sometimes finds great difficulty in providing for their payment at maturity: if instead of debentures perpetual stock is issued, the difficulty and danger will be avoided. Endeavours are often made to induce the holders of mortgage debentures to exchange them for preference shares; but not uncommonly without success; though unwilling to take shares, such persons might be ready to take perpetual mortgage debenture stock. As to another mode of securing this stock, see *infra*, p. 474, note, and *supra*, p. 63.

THIS INDENTURE, made the — day of —, between Parties.
the — Company, Limited (hereinafter called the company),
of the one part, and A. B., of —, C. D., of —, and E. F.,
of —, of the other part: WHEREAS [*Here will follow recitals* Recitals.
*showing the company's title to the property intended to be com-
prised in the security*]: AND WHEREAS,* by a special resolution
of the company, duly passed and confirmed at extraordinary
general meetings thereof, held respectively on the — day
of — and — day of —, it was resolved that a mort-
gage debenture stock of the nominal amount of 100,000*l.* be
and the same was thereby created: and that the said stock

(*) In this case the stock is supposed to have been created by special resolution, and the conditions of issue and trust deed approved in like manner; but in most cases the general powers of the directors would enable them to create and issue mortgage debenture stock without the sanction of a special resolution, and in such case the above recital would of course be modified.

Forms.	(hereinafter called the stock) should be issued upon certain conditions in the said resolution referred to; and that the redemption of the stock and the payment of interest thereon should be secured by an indenture in the terms of the draft therein also referred to (being the draft of these presents); and that the directors be and they were thereby authorised to affix the seal of the company to such indenture; AND WHEREAS a copy of the said conditions is set forth in the
Testatum 1.	third schedule hereunder written: NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, the
Freehold parcels.	company doth hereby grant unto the said A. B., C. D., and E. F., their heirs and assigns: ALL and singular the hereditaments specified in the first schedule hereunder written
Habendum.	[<i>general words—Estate clause</i>]: TO HAVE AND TO HOLD the same unto and to the use of the said A. B., C. D., and E. F., their heirs and assigns, upon and for the trusts and purposes hereinafter expressed and declared of and concerning the same:
Testatum 2.	AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, the company doth hereby assign unto the said A. B., C. D., and E. F., their executors, administrators, and assigns: ALL and singular the chattels and effects specified or referred to in the second schedule hereunder written:
Chattels.	TO HAVE AND TO HOLD the same unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, upon and for the trusts and purposes hereinafter expressed and declared of and concerning the same: AND IT IS HEREBY AGREED AND DECLARED that the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns, shall stand seised and possessed of the said premises hereinbefore expressed to be hereby granted and assigned respectively UPON TRUST, that they the said A. B., C. D., and E. F., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, their or his assigns (hereinafter called the trustees or trustee) shall permit the company and its assigns to hold and enjoy all the said premises, and to carry on therein and therewith the business of the company, until default shall be made in the redemption of, or the payment of interest on, the stock, or some part thereof, for the period of three calendar months after such redemption or interest ought to have been effected or paid pursuant to the said conditions, or until an order [<i>supra</i> , p. 445, down to "com-
Trusts.	
To permit company to retain possession until default, &c.	

mitted"], and from and after such default, &c. [*supra*, p. 445, *mutatis mutandis*] upon trust, subject to the proviso hereinafter contained, that the trustees or trustee may, in their or his discretion, without any such request as next hereinafter mentioned, and shall, upon the request in writing of the holder or holders of [5,000*l.*], at the least, of the stock, enter upon and take possession of the said premises, and may at the like discretion, and shall at the like request as aforesaid, sell [*trust for sale with ancillary provisions*]: PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:—First, that before making any such entry or sale, the trustees or trustee shall, except in the case of any such order or resolution as aforesaid, give written notice of their or his intention to the company, and shall not enter upon or sell the said premises or any part thereof in pursuance of the trust aforesaid, if in the case of such trust arising by reason of any default in the redemption of or the payment of interest on the stock or any part thereof, the company shall prove to the trustees or trustee payment of the monies so in arrear within three calendar months next after such notice as aforesaid shall have been given, or if in the case of such trust arising by reason of any such distress or execution or breach of covenant as aforesaid, the company shall forthwith, upon such distress or execution being levied or sued out or upon such notice as aforesaid, remove, discharge, or pay out such distress or [*supra*, p. 446]. Secondly, that [*proviso for protection of purchasers*]. Thirdly, that the trustees or trustee shall stand possessed of the monies to arise from any sale made pursuant to the said trust in that behalf upon trust thereout in the first place to pay or retain the costs and expenses incurred in or about such sale or otherwise in relation to this security, and to apply the residue of such monies as follows:—First, in payment to the holders of the stock, *pari passu*, in proportion to the amount due to them respectively, and without any preference or priority, of the monies for the time being due and owing to them for interest on their respective shares in the stock, Secondly, in or towards payment to the holders of the stock, *pari passu* in proportion to the amount held by them respectively, and without any preference or priority, of the full nominal amount of their respective shares therein, and that whether the day by the said conditions fixed for the redemption

Forms.

And then to enter and sell.

Proviso for benefit of company.

Proviso for protection of purchasers.
Trusts of proceeds of sale.

Forms.

Notice of distribution to be given.

Payments only to be made to registered holders of stock.

Receipt of registered holder of stock a good discharge.

Investment clause.

Stock to be a first charge.

of the stock shall have arrived or not. Thirdly, the surplus, if any, shall be paid to the company or its assigns : PROVIDED ALWAYS AND IT IS HEREBY AGREED and declared that before making any payment to the holders of the stock, whether in respect of interest or redemption monies, the trustees or trustee shall give ten days' notice at the least, by advertisement in the *Times* and one other London daily newspaper, of their or his intention to make such payment, and of the place where and the time when the same will be made, and if any such payment is to be made on account of redemption monies, then from and after the day fixed for the payment of the same by such notice as aforesaid, the holder of each share of the stock shall be entitled to interest on the balance only of the share of stock held by him after deducting the amount so payable to him as aforesaid : PROVIDED ALSO and it is hereby agreed and declared that the holder or holders of any share of the stock represented by a certificate to bearer, issued pursuant to the said conditions, shall not be entitled to receive any payment from the trustees or trustee until he or they shall have procured his or their name or names to be entered on the register of the holders of the stock to be kept by the company, pursuant to the said conditions in respect of such share of stock : PROVIDED ALSO and it is hereby agreed and declared that the trustees or trustee shall be at liberty to treat the registered holder or holders of any share of the stock as the absolute owner thereof, and shall not be bound to take notice or see to the execution of any trust, whether express, implied, or constructive, to which such share of stock may be subject, and that the receipt of such person or persons for any monies payable to him or them shall be a good discharge to the trustees or trustee, notwithstanding any notice they or he may have, whether express or otherwise of the right, title, interest, or claim of any other person to or in such share of stock or monies : PROVIDED ALSO and it is hereby agreed and declared that it shall be lawful for the trustees or trustee to invest any monies in their or his hands not immediately distributable under these presents in the names or name, or under the legal control of the trustees or trustee in any of the public stocks or funds, or government securities of the United Kingdom, or in stock of the Bank of England : AND THE COMPANY doth hereby covenant with the said A. B., C. D., and

E. F., their heirs, executors, administrators, and assigns, that the stock shall be a first charge upon the said premises; And that the holders of the stock shall not as among themselves be entitled to any preference or priority: AND THE COMPANY doth hereby grant [*power of distress*]. AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:—First, that after the trustees or trustee shall have entered [*power to carry on business till sale*]: And [*power to repair, insure, lease, &c.*] Secondly, that the trustees or trustee shall by and out of the rents, profits, and income of the same premises, and the monies to be [*trusts of rents, profits, and income—to pay outgoings, &c.*], and shall stand possessed of the residue of the said rents, profits, and monies upon the trusts hereinbefore declared of and concerning the monies to arise from any sale under the trust in that behalf hereinbefore contained: AND THE COMPANY [*covenant by company to insure the premises and keep them in repair, and to allow trustees to enter and inspect, &c.*]: AND THE COMPANY [*covenants by the company for title and further assurance*]: Provided always [*power to appoint new trustees*].

Forms.

Power for trustees to carry on business, &c.

Covenants by company.

IN WITNESS, &c.

THE SCHEDULES ABOVE REFERRED TO.

FIRST SCHEDULE.

[*Description of hereditaments.*]

SECOND SCHEDULE.

[*Particulars of chattels, &c.*]

THIRD SCHEDULE.

The following are the conditions upon which the mortgage debenture stock of the nominal amount of 100,000*l.*, created by special resolution of The — Company, Limited, passed and confirmed at general meetings thereof held respectively on the day of and day of , will be issued:—

1. The stock will be redeemed at par on the day of , 1887, upon which day the company will, subject to these conditions, pay to the several holders of the stock, the full nominal amount of their respective shares therein. Such payments will be made at the registered office of the company. Redemption.

2. In the meantime the company will, as from the day of , Interest. 18 , pay, to the holders of the stock, interest on their respective shares therein, at the rate of 8 per cent. per annum. Such interest will be paid

Forms. half-yearly, on the day of and day of . The first half-yearly payment will be made on the day of .
Ordinary certificates. 3. Every holder of a share in the stock will be entitled to a certificate under the seal of the company, stating the amount of the stock held by him. Such certificate will be in the following form :—

The — Company, Limited.
 100,000*l.* mortgage debenture stock, 1877.

No. —, —*l.*

This is to certify that , of , is the registered holder of *l.* *s.*, of the above-mentioned stock of The — Company Limited.

The redemption of the said stock, and the payment of the interest thereon, is secured by an indenture, dated, &c., and made, &c., whereby and other property of the company was vested in trustees for the benefit of the holders of the said stock.

Indorsed hereon is a copy of the conditions of the issue of the said stock.

Given under the common seal of the said company, this day of .



 _____ } Directors.

Countersigned, , Secretary.

There shall be indorsed upon every such certificate a printed copy of these conditions.

Holder entitled to several.

4. Every holder of a share in the stock shall be entitled, at his discretion, to several such certificates, each for a part of his stock.

Fees.

5. There shall be paid to the company for every such certificate the sum of *1s.*

Registered holder to be deemed absolute owner.

6. The company will recognise the registered holder of any share of registered stock as the absolute owner thereof, and shall not be bound to take notice or see to the execution of any trust, whether express, implied, or constructive, to which such share of stock may be subject; and the receipt of such person for the interest from time to time accruing due in respect thereof, and for any monies payable upon the redemption of the same shall be a good discharge to the company, notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest, or claim of any other person to or in such share of stock or monies.

Survivorship.

7. In case of the death of any one of the joint holders of any registered stock, the survivor will be the only person recognised by the company as having any title to or interest in such stock. The dissolution of a body corporate shall, for the purpose of this clause, be treated as its death.

Transfer.

8. Every holder of registered stock will be entitled to transfer the same or any part thereof by an instrument in writing in the form following :—

The — Company, Limited.

I, , of , in consideration of the sum of paid to me by

, of , do hereby transfer to the said —I., of the mortgage debenture stock of the above-named company standing [or, part of the stock standing] in my name in books of the said company, to hold the same unto the said his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof. And I, the said , of , do hereby agree to take the said stock, subject to the same conditions.

As witness our hands this day of .

Witness .

Forms.

9. Every such instrument must be executed, both by the transferor and transferee, and the transferor shall be deemed to remain owner of such stock until the name of the transferee is entered in the register (hereinafter mentioned) in respect thereof.

Execution of transfer.

10. Every instrument of transfer must be left at the registered office of the company for registration, accompanied by the certificate of the stock to be transferred, and such other evidence as the directors may require to prove the title of the transferor or his right to transfer the stock.

Transfer to be left at office, &c.

11. All instruments of transfer which shall be registered will be retained by the company.

And will be retained.

12. A fee not exceeding 2s. 6d. will be charged for the registration of each transfer, and must, if required by the directors, be paid before the registration of the transfer.

Fees on transfer.

13. No transfer will be registered during the fourteen days immediately preceding the said day of and day of in each year.

Closing register of transfers.

14. No transfer of registered stock shall be made to an infant or person of unsound mind, or to a married woman.

No transfer to infant.

15. The executors or administrators of a deceased holder of registered stock (not being one of several joint holders) shall be the only persons recognised by the company as having any title to such stock.

Transmissions.

16. Any parent or guardian of an infant, or any committee of a lunatic holder of registered stock, or any person becoming entitled to registered stock in consequence of the death of any holder of such stock, or of the marriage of any female holder of registered stock, or in any other way than by transfer or survivorship, upon producing such evidence that he sustains the character in respect of which he proposes to act under this condition, or of his title, as the directors shall think sufficient, may be registered himself as the holder of such stock, or, subject to the preceding conditions as to transfers, may transfer the same to some other person.

Rights of parents, &c.

17. The directors shall be at liberty to retain the interest payable upon any share of registered stock, in respect of which any person under condition 16 is entitled to be registered as the holder, or which any person under that condition is entitled to transfer, until such person shall become a registered holder of such share of stock, or shall duly transfer the same.

When interest may be withheld.

18. Upon the application of the holder of a share of registered stock the company will issue to him a certificate to bearer specifying the share of such stock held by him. Every holder of registered stock will be entitled at his discretion to several such certificates, each for a part of his registered stock. Every such certificate will be in the following form :—

Certificates to bearers.

Forms.

The — Company, Limited.
100,000*l.* mortgage debenture stock, 1877.

No. —, —*l.*

This is to certify that the bearer of this certificate is the holder of
l. *s.* of the above-mentioned stock of The — Company,
Limited.

The redemption of the said stock, and the payment of the interest thereon, is secured by an indenture, dated, &c., and made, &c., whereby and other property of the company was vested in trustees for the benefit of the holders of the said stock.

Indorsed hereon is a copy of the conditions of the issue of the said stock.

Given under the common seal of the said company, this day
of



_____ } Directors.

Countersigned, , Secretary.

There shall be indorsed on every such certificate a printed copy of these conditions.

19. A certificate in such last-mentioned form is, in these conditions, called a "certificate to bearer."

Request to
issue.

20. A certificate to bearer will not be issued, except upon a request in writing, signed by the person for the time being entered in the register, hereinafter mentioned, as the holder of the stock in respect of which the certificate to bearer is to be issued.

Form of.

21. The request must be in such form, and authenticated in such manner as the directors shall from time to time require, and must be lodged at the office of the company; and the certificates then outstanding in respect of the stock intended to be included in the certificate to bearer must, at the same time, be delivered up to the said directors to be cancelled. There shall be paid to the company, for every certificate to bearer, the sum of *1s.*

Fee.

New certi-
ficates.

22. If the bearer, for the time being, of a certificate to bearer, shall surrender the same, together with the coupons for future interest belonging thereto, to the directors to be cancelled, the directors will issue to him a new certificate to bearer for the stock specified in the certificate so delivered up, or any part thereof.

Re-entry on
register.

23. If the bearer of a certificate to bearer shall surrender the same, together with the coupons for future interest belonging thereto, to the directors, to be cancelled; and shall therewith lodge at the office of the company a declaration in writing, signed by him, and in such form as the directors shall from time to time direct, requesting that his name may be entered in the register, hereinafter mentioned, as the holder of the stock specified in the same certificate, or any part thereof; and stating in such declaration his name, and condition or occupation, and address, the director will enter his name in the said register in respect of the stock specified in the said certificate, or any part thereof as aforesaid.

24. The company will recognise the bearer of a certificate to bearer as the absolute owner of the share of the stock therein specified, and shall not be bound to take notice or see to the execution of any trust, whether express, implied, or constructive, to which such share of stock may be subject; and the receipt of such person for any monies payable upon the redemption of the same share of stock shall be a good discharge to the company, notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest, or claim of any other person to or in such share of stock or monies.

Forms.

Bearer of
certificate
absolute
owner.

25. With every certificate to bearer there will be issued coupons providing for the interest thereafter to accrue due in respect of the share of the stock therein specified up to the time fixed for the redemption of the same.

Coupons.

Every such coupon will be in the form following, and will be signed on behalf of the company by the secretary thereof, or by some other person appointed by the directors:—

Form of.

The — Company, Limited.

100,000*l.* mortgage debenture stock, 1877.

Certificate to bearer, No. .

Coupon, No. .

The bearer of this coupon will, on the day of , be paid by the above-named company, at its registered office, the sum of *l.* *s.*, being six months' interest on the share of stock comprised in the above-mentioned certificate.

For the said company.

£ s. d.

—, Secretary.

26. There will be a printed indorsement on every such coupon, to the following effect:—

Indorsement
on.

"The company will recognise the bearer of this coupon as the absolute owner of the interest monies therein specified, and shall not be bound to take notice or see to the execution of any trust, whether express, implied, or constructive, to which such monies may be subject; and the receipt of such person for the same monies shall be a good discharge to the company, notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest, or claim of any other person to or in such monies."

27. The interest upon the registered stock will be paid, at the registered office of the company, to the holders thereof, upon, or at any time after, the day appointed by these conditions for the payment thereof. The interest upon the stock represented by certificates to bearer, will be paid in accordance with the terms of the coupons issued with such certificates.

Interest how
to be paid.

28. If several persons are entered in the register as joint holders of any share of registered stock, the receipt of any of such persons for the interest from time to time payable in respect of such share shall be as effectual a discharge to the company as if the person signing the same receipt were the sole registered holder of such share of stock.

Receipt of one
of joint
holders.

29. If any certificate or coupon issued pursuant to these conditions be worn out or defaced, then, upon production thereof to the directors, they will cancel the same, and will issue a new certificate in lieu thereof;

Forms.	and if any such certificate or coupon be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, or in default of proof, on such indemnity as the directors deem adequate being given, a new certificate in lieu thereof will be given to the person entitled to such lost or destroyed instrument. An entry as to the issue of the new certificate or coupon and indemnity (if any), will be made in the register hereinafter mentioned.
Register.	30. A register of the stock will be kept by the company in one or more books, and there shall be entered in such register :— (1.) The names and addresses and descriptions of the holders for the time being of the stock. (2.) The amount of stock held by every such person. (3.) The date at which the name of every such person was entered in respect of the stock standing in his name and every part thereof.
How to be altered on issue of certificate to bearer.	31. On the issue of a certificate to bearer the company shall strike out of the said register the name of the person then entered as the holder of the stock specified in such certificate, and shall enter the following particulars :— (1.) The fact of the issue of the certificate to bearer. (2.) A statement of the amount of the stock included in such certificate. (3.) The date of the issue of the certificate to bearer.
Inspection.	32. The trustees or trustee and any holder of a share in registered stock, or bearer of a certificate to bearer, will, upon payment of such fee (not exceeding 1s.) as the director shall from time to time fix, be entitled at all reasonable times to inspect the said register.
No notice of trusts.	33. No notice of any trust, express, implied, or constructive, shall be entered on the register in respect of any share in the debenture stock.
Interpretation.	34. In these conditions, unless there be something in the subject or context inconsistent therewith— “The company” means The — Company, Limited. “The directors,” means the directors for the time being of the company. “The stock” means the said mortgage debenture stock, created as above mentioned. “Registered stock,” means so much of the stock as shall not for the time being be represented by certificates to bearer. Words importing the singular number only, include the plural. Words importing the plural number only, include the singular. Words importing persons, include corporations.

NOTE.—If thought more convenient, mortgage debenture stock can be secured by a deed of covenant between the company and trustees, whereby the company will covenant that the stock shall be a first charge upon all its property, present and future; a proviso will be added enabling the company to deal with its property until default in payment of interest, or a winding-up order, &c. See *supra*, p. 435. The holders of stock so secured would be in much the same position as the holders of mortgage debentures, similar to those given, *supra*, pp. 435, 437. See *supra*, p. 465.

RECONSTRUCTION.

INTRODUCTORY NOTES.

THERE are two modes of reconstructing a company formed or registered under the Companies Act, 1862 :

1. By special Act of Parliament.

2. By means of a winding up and a proceeding under Section 161 of the Act.

Two modes of reconstruction.

Special Act.
Section 161.

The latter mode is frequently used : the former occasionally.

Where an existing company, formed under the Act of 1862, finds it necessary to apply to the Legislature for Parliamentary powers, it is not uncommonly deemed expedient to take the opportunity of procuring its reconstruction, to the intent that it may thenceforth be governed by the Companies Clauses Consolidation Act, 1845, and the Acts amending the same, instead of the Companies Acts, 1862 and 1867.

As to special Act.

Among other results of such a reconstruction, the company gets rid of the word "Limited," as part of its name, and it is no longer bound to make the returns required by the Companies Act, 1862. But it must be remembered that by virtue of the reconstruction, Parliament obtains control over the capital of the company, which thenceforth can only borrow or issue new shares within the limits prescribed by the Act, and in order to extend the limits must obtain a further special Act.

The companies which seek for reconstruction by Act of Parliament are for the most part gas and water companies, or companies engaged in works of a similar quasi-public character.

There are, moreover, some companies which are formed under the Act of 1862 for the express purpose of being reconstructed by special Act. See further, *supra*, p. 110, note to Clause 5.

With regard to reconstruction by means of a winding up and a proceeding under Section 161 of the Act of 1862. Section 161 is as follows :—

Reconstruction under section 161.

"Where any company is proposed to be or is in course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company, for the purpose of distribution among the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators, or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things, as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court."

The price to be paid to dissentients is to be determined in accordance with Section 162 of the Act, which is as follows:—

“The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of The Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and ‘the company’ shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators, if more than one.”

A reconstruction under Section 161 above, has now become a matter of ordinary occurrence, and may be resorted to with advantage in a variety of cases, of which the following are examples:—

Reconstructions common.

A. Where a company desires to do something *ultra vires*, e.g. :—

Examples.

- (1.) To engage in some business or do some thing not within the objects set forth in its memorandum of association. See *supra*, p. 81.
- (2.) To issue preference shares, there being no power in the memorandum or articles to do so. See *supra*, p. 266.
- (3.) To issue preference shares, having a priority over preference shares already issued, notwithstanding the holders of such last-mentioned shares, or some of them, refuse to consent. [See *supra*, p. 293.]
- (4.) Where its capital is divided into several classes, e.g., preference, deferred, and ‘founders’ shares, and it is deemed expedient to convert all the shares into shares or stock of uniform description, but a minority dissent.

B. Where a company desires, without submitting to the stringent conditions prescribed by the Companies Act, 1867, upon a reduction of capital, to carry into effect any arrangement which would amount to a reduction of capital, e.g. :—

- (1.) To divide part of its paid-up capital, either in cash or in specie, among its members.

- (2.) To reduce the liability on its shares which are only in part paid up.
- (3.) To extinguish all further liability on such shares.
- (4.) Having lost a large amount of capital, to reduce the nominal amount to the actual amount, in order that dividends may be paid, and that the shares may not be saleable only at a heavy discount.

[It has lately been held that this cannot be effected under the Act, 1867. *Ebbw Vale, &c., Co.*, W. N. 1877, 4.]

C. So, too, where a company is being wound up voluntarily, and a large body of its members consider that its assets or any specific part of them can be realised with better prospect of success by a going concern than by one in liquidation.

Mode in which
reconstruction
effected.

The mode in which the reconstruction is carried into effect is as follows :—

Case A.

In case A. (1). *Supra*, p. 477.

Let it be supposed that the capital of the existing company is 100,000*l.*, divided into 10,000 shares of 10*l.* each, that its object is to work a particular patent for the manufacture of steel, and that it desires to have power to acquire and work other patents for the like purpose.

Preliminary
steps.

The directors, having satisfied themselves that a reconstruction is expedient, will suggest it at a general meeting and procure a resolution in favour of it to be passed, or, as is sometimes done, they will issue a circular to the members or to the largest holders of shares seeking their approval of the plan.

New com-
pany.

If the plan is favourably received, the memorandum and articles of a new company will be prepared. The objects of such company will be to acquire and undertake the property and liabilities of the old company, and to acquire and work *any* patents for the manufacture of steel and such other objects as may be deemed expedient. The capital will be the same as that of the old company. The articles will authorise the directors to purchase and undertake all or any part of the property and liabilities of the old company upon such terms as they think fit.

Issue of
notice.

Probably by the articles all, or some, of the directors of the old company will be appointed directors of the new company. Notice will then be issued by the directors of the old company convening an extraordinary meeting of that company

to consider certain resolutions which will be given in the notice.

The resolutions will be (1), to wind up voluntarily ; (2), to appoint liquidators ; (3), to approve a scheme of reconstruction, subject to certain conditions, and to authorise the liquidators, pursuant to Section 161 of the Act, to carry it into effect. See *infra*, p. 488.

If the resolutions are passed by the requisite majority at the first meeting, a second one will be called to confirm them, so that they may become special resolutions. See *supra*, p. 310. Special resolution.

If they are duly confirmed, the new company will be at once incorporated, and the liquidators of the old company and the directors of the new company will execute an agreement, which will have been previously prepared for carrying the transfer into effect. Sale by liquidators.

The agreement will provide for the sale of all the property of the old company to the new company, in consideration of the new company undertaking the debts and liabilities of the old company, paying the costs of winding it up, providing the funds necessary to purchase the interests of any dissentient members, and allotting to every assenting member of the old company one share in the new company in respect of each share held by him in the old company. Agreement.

If the matter has been properly managed, the chances are that there will be but few dissentient members (if any). The funds to pay them will be provided by the new company by borrowing or otherwise. Dissentients.

The property of the old company will be in due course made over to the new company, which will allot its shares as provided by the agreement. Completion of sale.

The debts and liabilities of the old company (if it has any) will be got rid of as soon as possible. Many of the creditors will probably agree to accept the liability of the new instead of the old company ; the rest will be paid.

As soon as may be the liquidators hold the final meeting (Section 142 of the Act), and make the proper return to the registrar (Section 143 of the Act), and at the expiration of three months therefrom the old company is *ipso facto* dissolved. Dissolution of old company.

Section 161, it will be observed, authorises a sale sanctioned by a special resolution conferring “ *either* a general authority on the liquidators, *or* an authority in respect of any particular liquidators. General or particular authority to liquidators.

Where specific agreement to be sanctioned.

arrangement." It is extremely seldom that a general authority is given ; in almost all cases it is qualified either as above by specifying certain conditions, or it is limited to the adoption of a specific agreement. Where it is desired to sanction the adoption of a particular agreement, there are two plans commonly adopted :

Plan 1.

1. A draft agreement expressed to be made between the old company and its liquidators, and the new company, is prepared at the same time as the memorandum and articles of the new company. The agreement will contain all the necessary clauses providing for the sale. The notices of the meetings will state the proposed resolutions, and also the chief provisions of the agreement.

The resolutions will be (1), to wind up; (2), appointing liquidators; and (3), authorising them to enter into an agreement with the new company in the terms of the draft. The new company will then be incorporated, and matters will then proceed as above, p. 479.

Plan 2.

2. The other plan is as follows :—A provisional agreement between some person on behalf of the old company,—*e.g.*, one of the directors,—and some person on behalf of the new company, is prepared at the same time as the memorandum and articles of the new company. The agreement will contain the terms of sale, and will be made conditional on the adoption thereof by the liquidators of the old company, with the sanction of a special resolution of that company. The special resolution of the old company will *inter alia* sanction the adoption of this agreement. The subsequent procedure will be as in Plan I.

There are other variations in the mode of procedure which need not be specified. Perhaps the simplest and best plan is that above described, p. 478. But the plans just referred to are very commonly adopted and work well.

Variations in arrangement.

Of course the arrangement must vary according to the circumstances of the company, and the object of the reconstruction.

Thus in cases A. (2) and (3), *supra*, p. 477 :—

Care will be taken that the articles of the new company contain full power to issue preference shares, or the capital of the new company will consist in part of preference shares. See *infra*, p. 498.

In case A (4), *supra*, p. 477.

A fair estimate will be made of the relative value of the different shares, and the terms of sale will provide for the issue of shares by the new company accordingly, *e.g.*, one for every founder's share, four for every deferred share, and ten for every preference share. See *infra*, p. 496.

In case B (1).

Suppose that the shares in the old company are 20*l.* fully paid up, and that it is desired to return 10*l.*, the agreement will provide that the new company shall, in exchange for each share in the old company, allot one fully paid up 10*l.* share in the new company, and pay the sum of 10*l.* in cash.

Or suppose that the object of the reconstruction is to divide in specie some assets of doubtful value, *e.g.*, Turkish bonds. The new company will, as the consideration for the sale, agree to allot shares to the members of the old company, and to divide the bonds among them *pro rata*.

In case B (2).

Suppose the shares in the old company are 20*l.* with 10*l.* paid up, and it is desired to reduce the liability to 5*l.* In such case, one 15*l.* share in the new company, with 10*l.* credited as paid up, will be allotted in exchange for each share in the old company.

In case B (3).

Suppose the shares in the old company to be 10*l.* with 7*l.* paid up, and that it is desired to extinguish all further liability. The object will be attained by allotting one fully paid up 7*l.* share in the new company in exchange for each 10*l.* share in the old company.

In case B (4).

Suppose the shares in the old company are 10*l.* fully paid up, and that one-half the capital has been lost. In such case the new company will allot one of its 5*l.* shares, fully paid up, in exchange for each 10*l.* share in the old company.

In case C, *supra*, p. 478.

The liquidators will call the meetings to pass the necessary special resolutions.

In cases of reconstruction the new company very commonly takes the name of the old one. This is effected under Section 20 of the Act. See *supra*, p. 79. Immediately after the special resolution to wind up, &c., has been passed by the

New company
commonly
takes the old
name.

old company, the liquidators sign the proper consent to the registration of the new company by the same name. *Supra*, p. 315. Sometimes the name is slightly varied, and sometimes a perfectly different one is chosen for the new company.

Sale must be to company.

It will be observed that Section 161 only authorises a sale to a *company*. Hence a sale to an individual, who is to form a new company, and make such profit as he can out of the transaction, is not valid. *Bird v. Bird's Patent Sewage Co.*, 9 Ch. 358.

But an agreement with some person purporting to act on behalf of an intended company for a sale to him as such agent or to the company is valid. *In re Hester & Co.*, 44 L. J. N. S. 757.

It may be to foreign company.

Section 161 does not require that the sale should be made to a company registered under the Act of 1862. The sale may be to any company, English or foreign. *In re Irrigation Co. of France, Ex parte Fox*, 6 Ch. 183.

Liquidators may be directed to adopt agreement.

An agreement adopted by the liquidators of a company pursuant to the *direction* of the company given by virtue of Section 161 is valid. *Southall v. British Mutual Life Assur. Soc.*, 11 Eq. 65; 6 Ch. 614.

Agreement may provide for allotment of shares to members directly.

Section 161 contemplates an authority being given to the liquidators to "*receive* in compensation, or part compensation, for such transfer or sale shares, policies, or other like interests in such other company for the purpose of distribution among the members of the company being wound up" But in practice the agreement, very commonly, provides for the allotment of the shares, &c., to the members of the company being wound up directly, and there can be no doubt that such an arrangement is valid. See *Southall v. British Mutual Life Assurance Soc.*, *ubi supra*. See also *In re Imperial Mercantile Credit Association*, 12 Eq. 505. In the case last mentioned the company was being wound up under the supervision of the court, and a conditional agreement (see copy, *infra*, p. 502) was made for the sale of the assets to a new company in consideration of cash or shares to be paid or allotted directly to the members of the selling company. The agreement was approved by special resolution pursuant to Section 161 of the Act, and was duly sanctioned by the Court.

As to dissentients.

By Section 161 of the Act, members who dissent from the special resolution are allowed seven days from the date of

the meeting at which it was passed, *i.e.*, the second meeting, within which they must give notice of dissent. For form of notice, see *supra*, p. 310.

If a dissentient member fails to give such notice, he must either accept the benefit offered him by the reconstruction, *i.e.*, he must become an assenting member, or else he entirely loses his beneficial interest in the old company; for although he will remain entitled to his shares in that company, yet they are shares in a mere husk, for the whole of the assets of the old company are made over to the new company.

Failure to give notice of dissent.

It was at one time contended that if a dissentient member did not express his dissent within the prescribed period he was bound by the sale or arrangement, and was consequently under an obligation to accept any shares or other interest in the purchasing company, which were thereby to be allotted to him; but this notion was very soon exploded, and it is now settled that the provision in Section 161, that "any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso," &c., merely means that a dissentient member cannot impeach the sale. He must either assent or dissent in the prescribed manner, or simply lose. *Los's Case*, 13 W. R. 883; 34 L. J. Ch. 609; *Higg's Case*, 2 H. & M. 657; *Martin's Case*, 2 H. & M. 669; *Fox's Case*, 6 Ch. 183; *Southall v. British Mutual Life Assurance Soc.*, 6 Ch. 614.

Dissentient not bound to take shares in new company.

A member who has duly dissented is entitled to have the purchase-money for his interest paid to him; and, when it has been ascertained, he has a right of action against the company. *De Rosaz v. Anglo-Italian Bank*, 4 Q. B. 462.

Payment to dissentient.

The price to be paid to dissentients is in default of agreement to be ascertained by arbitration, but if the articles contain provisions for arbitration, it is not necessary to resort to the Companies Clauses Consolidation Act, 1845, as provided by Section 162 of the Act of 1862: the arbitration should proceed in accordance with the articles. S. C.

Arbitration.

A dissentient member whose interest has been purchased in accordance with Section 161 of the Act, does not thereby escape from liability towards the creditors of the company which is being wound up. *Vining's Case*, 6 Ch. 101.

Dissentient still liable for debts of company.

As to the source from whence the funds to pay dissentient

Whence funds

to pay dissentients to come.

members is to come : according to the above plan the new company is bound by the agreement to provide them. It is necessary to impose this obligation on the new company because, by the agreement, the old company is to sell *all* its property.

A mode of reconstruction sometimes adopted is to provide by the agreement for the allotment of the share consideration to the liquidators or their nominees, instead of to the members directly, and not to insert any provision requiring the new company to pay the dissentients. The special resolution of the old company in such case, besides sanctioning the agreement, will direct the liquidators of the old company to raise the funds to pay dissentients by the sale of a sufficient number of the shares in the new company to be allotted pursuant to the agreement, and to distribute the residue of such shares among the assenting members. But the former is the most convenient plan. The result in either case is the same.

Security of dissentients must be regarded.

Care should be taken so to frame the agreement that dissentient members shall have sufficient security for the payment of the purchase-money for their interests ; otherwise there will be risk of legal proceedings.

Hester & Co.

In the recent case of *In re Hester & Co.*, 44 L. J. N. S. 757 ; W. N., 1875, 179, a resolution had been passed for winding up, appointing liquidators, and sanctioning an agreement for the sale of the assets of the company in consideration of shares in the purchasing company, and directing the liquidators to raise the purchase-money to be paid to dissentients *by sale of the shares which would otherwise have been allotted to them*. The agreement was for the sale of *all* the assets, and contained no provisions as to dissentients. Before the resolutions were confirmed a contributory presented a petition to wind up the company, alleging that the interests of the non-assenting members would be sacrificed if the agreement was carried into effect, and that the last resolution was *ultra vires*, and that it was just and equitable that the company should be wound up. Bacon, V.-C., accordingly made an order for winding up, from which there was an appeal. Upon the hearing before the Court of Appeal, counsel for the company offered an undertaking not to part with the assets until the dissentients were paid the value of their shares, and, the Court having expressed an opinion that this was sufficient, the offer was accepted.

James, L. J., after directing the costs to be paid out of the assets of the company, and expressing an opinion that the petitioner was entitled to protection, and that the Court would, if necessary, afford him that protection by making a winding-up order without forcing him to file a bill, proceeded as follows :—

“What appears in the present case is this. True it is that by the resolution the value of their shares is offered to dissentients, but no security is offered for payment, except the shares to which they would be entitled in the new company. I was entirely unaware, when the petition was opened, that every share in the old company was already paid up, and that there were no shares on which calls could be made to provide a fund for the payment of the dissentient shareholders. That is not what the Act of Parliament contemplated in the 161st Section. It says that the company shall not be dissolved until the value of any dissentient's shares is ascertained and paid. The intention of that clearly is to preserve him a remedy against the assets of the company for payment of this demand, since he could go against the shareholders for their unpaid contributions to obtain payment of his debt. But here all the shares are paid up, and there is no unpaid capital to be resorted to, and all the existing assets are to be handed over, so that there is no security for the dissentient shareholders. The 161st Section must not be read in a way that will put any dissentient shareholder at the mercy of a majority, but you must give him the security which the Act of Parliament intended to give him. That is the ground on which we feel that we ought to enforce the jurisdiction in this case in the same way as we did in *Fox's Case* [6 Ch. 185] and other cases, so as to secure to the dissentient shareholders that which they are entitled to under the Act of Parliament, namely, to have the full value of their shares ascertained and paid according to the Act of Parliament.”

Mellish, L. J., concurred.

As finally arranged, the undertaking was that the liquidators should not part with the assets until the petitioner and the shareholders supporting the petition, and any shareholder who had given proper notice of dissent, had been paid the value of their shares, and upon such undertaking the winding-up order was discharged. Costs out of the estate.

Agreements, with a view to reconstruction, generally provide

that the purchasing company shall pay dissentients, but from the above case it would seem that this might not be regarded as a sufficient security, unless the selling company had uncalled capital; and accordingly a clause is now sometimes inserted giving the liquidators a lien on the assets for the amount payable to dissentients, and the right to retain possession until they are satisfied. This appears to remove any ground for complaint by dissentients, as in *Hester & Co., ubi supra*.

But where the selling company has uncalled capital it would seem from the above case that such a clause is unnecessary. It may, however, be doubted how far this is consistent with the principles laid down in *Clinch v. Financial Corporation*, 4 Ch. 120, and *infra*, p. 539.

Notice calling
meetings to
pass special
resolution.

The validity of a special resolution sanctioning a sale or arrangement under Section 161, essentially depends on the sufficiency of the notices given convening the meetings. They ought to give the members either direct or indirect notice that the transaction is to be effected under Section 161. *Imperial Bank of China, &c. v. Bank of Hindustan, &c.*, 6 Eq. 91; *Fox's Case*, 6 Ch. 176. A notice which states (*inter alia*) that a resolution is to be proposed authorising the liquidators to sell the assets to another company and to accept compensation in shares is probably sufficient; but the usual plan now is to refer expressly to Section 161. See *supra*, p. 310. This precludes all doubt. Of course, the reference to Section 161 may be either in the notice or in the accompanying circular (if any).

As to filing
agreement.

The agreement with the new company must, if it provides for the issue of paid up shares, be filed pursuant to the 25th Section of the Companies Act, 1867. See *supra*, p. 6.

It is also not unusual to file subsequent agreements between the new company and the members of the old company to whom shares are allotted specifying the shares allotted. But having regard to the decision in *Carling's Case*, 1 Ch. Div. 115, and other cases cited *supra*, p. 10, it would seem that the filing of the principal agreement is sufficient.

However, it may be expedient to file a subsequent agreement to identify the shares allotted to each member of the old company. See *supra*, p. 11.

Remuneration
of liquidators.
Alteration of

The liquidators, in a winding up for the purpose of reconstruction, generally act without remuneration, or for a small fee.

A company cannot, by an alteration in its articles, made in

contemplation of a winding up, and proceeding under Section 161 of the Act, deprive dissentient members of the right given them by that section. *Ex parte Fox*, 6 Ch. 176. There seems, however, no reason why the rights of dissentient members, under Section 161, should not be restricted by the articles as originally framed. See *supra*, p. 199.

articles in
derogation of
rights of dis-
sidentients.

Where the special resolution sanctioning an agreement for a sale under Section 161 is invalid for want of proper notice, the transaction can, nevertheless, be confirmed. *Fox's Case*, 6 Ch. 176. In order to effect this, the liquidators must call the necessary meetings and procure the members to pass proper special resolutions.

Confirmation
of invalid
resolution.

It will be remembered that Sec. 161 provides that if an order be made within a year for the winding up the company by or subject to the supervision of the Court, the resolution shall not be of any validity unless sanctioned by the Court.

Order to wind
up.

Any company not formed or registered under the Act of 1862, but which is capable of being registered under that Act, may effect a reconstruction under Section 161. In order to do this it will register under the Act, and the reconstruction may then be carried into effect as above mentioned. It is no objection that the registration was made expressly with a view to winding up and selling under Section 161. *Southall v. British Mutual Life Assurance Society*, 6 Ch. 614.

Company may
register with
a view to re-
construction.

The reconstruction of a company may be effected under Section 161 in a winding up subject to supervision, as well as in a purely voluntary winding up. *In re Imperial Mercantile Credit Association*, 12 Eq. 504.

Reconstruc-
tion in wind-
ing up subject
to supervision.

In a compulsory winding up, an arrangement is sometimes carried into effect which in substance is very similar to a reconstruction under Section 161, viz., a sale of the whole assets is sanctioned under Section 95 to a new company for a certain sum in cash, with the option to each member of the old company to accept payment for his interest in the old company in shares in the new company. See *In re Agra and Masterman's Bank*, 12 Eq. 409; 15 W. R. 554, in which the reconstruction of a company winding up subject to supervision was effected by sale under Section 95 of the Act.

Reconstruc-
tion in com-
pulsory wind-
ing up.

A reconstruction and an arrangement with creditors under the Act of 1870 are not uncommonly effected at the same time. See *infra*, 591.

RECONSTRUCTION—FORMS.

SCHEME I.

Forms.

In this case the shares of the existing company are 10*l.*, with 5*l.* paid up. The object of the reconstruction is to get rid of all further liability and to give to the reconstructed company more extensive objects than those of the existing one.

As to the procedure, see *supra*, p. 478, *et seq.*

The special resolutions will be as follows :—

1. That the company be wound up voluntarily, and that A. B., of —, and C. D., of —, be and they are hereby appointed liquidators for the purposes of such winding up.

2. That the following scheme of reconstruction be and the same is hereby approved, namely :—That a new company be incorporated under the Companies Acts, 1862 and 1867, as a company limited by shares by the name of The — Company, Limited, with a capital of 50,000*l.*, divided into 10,000 shares of 5*l.* each, and having power to acquire and take over the business, property, and liabilities of this company ; and that the said liquidators be and they are hereby authorised, pursuant to Section 161 of the Companies Act, 1862, to sell to such new company upon such terms, and subject to such conditions as they shall think fit, all or any part of the property of this company, but so that the new company shall undertake all the liabilities of this company, shall pay the costs of winding it up, and provide the funds (if any) which may be required to purchase the interests of any dissentient members whose interests the liquidators may have to purchase, and that every member of this company shall in respect of each share therein held by him, be entitled to require the new company to allot to him one of its 5*l.* shares, with the sum of 5*l.* credited as paid up thereon, and that the said liquidators be and they are hereby authorised to execute and do all such assurances and things as may be necessary for carrying the said scheme into effect.

These resolutions having been duly passed, the new company will be incorporated. See *supra*, p. 479, and the following agreement will be executed :—

AN AGREEMENT made the — day of —, between **Forms.**
 A., of —, and B., of —, the liquidators of The — Com- **Parties.**
 pany, Limited, of the first part, the said company (hereinafter
 called the old company), of the second part, and The —
 Company, Limited (hereinafter called the new company), of
 the third part: WHEREAS the old company was incorporated **Recitals.**
 in the year —, under the Companies Acts, 1862 and 1867,
 with a nominal capital of 100,000*l.* divided into 10,000 shares
 of 10*l.* each: AND WHEREAS the whole of the said shares have
 been issued, and the sum of 5*l.* per share stands credited in
 the books of the company as having been paid up thereon:
 AND WHEREAS by special resolution of the old company passed
 and confirmed at general meetings thereof, held respectively
 on the — day of — and — day of —, it was resolved
 that the old company be wound up voluntarily, and that the
 said A. and B. be and they were thereby appointed liquidators
 thereof, and it was resolved that the following scheme be and the
 same was thereby adopted, namely: That a new company be
 incorporated under the Companies Acts, 1862 and 1867, as a
 company limited by shares, by the name of The — Com-
 pany, Limited, with a capital of 50,000*l.*, divided into 10,000
 shares of 5*l.* each, and having power to acquire and take over
 the business, property, and liabilities of the old company, and
 that [*supra*, p. 488]: AND WHEREAS the new company has
 since been incorporated under the Companies Acts, 1862 and
 1867, with a nominal capital of 50,000*l.*, divided into 10,000
 shares of 5*l.* each: AND WHEREAS the objects of the new
 company as set forth in the memorandum of association thereof,
 are (among other things) to purchase or otherwise acquire all
 or any part of the property of the old company, and to under-
 take the liabilities thereof: AND WHEREAS by the articles of
 association of the new company, it is provided that the same
 company shall forthwith execute the agreement therein referred
 to, being these presents: NOW IT IS HEREBY AGREED AS
 FOLLOWS:

1. The old company and its liquidators shall sell, and the new **Agreement**
 company shall purchase: all and singular the goods, chattels, **for sale.**
 monies, credits, debts, bills, notes, and things in action of the
 old company, and the undertaking, business, and goodwill
 thereof, with the full benefit of all contracts and agreements, and
 of all securities in respect of the said things in action, to which

Forms.

New company
to pay debts,
&c., of old
company.

the old company is entitled, and all other the real and personal property of the old company whatsoever and wheresoever ; subject nevertheless as to all the said premises to the several mortgages, charges, liens, and incumbrances affecting the same or any part thereof, and saving to the old company its uncalled capital.

2. As a part of the consideration for the said sale the new company shall pay, satisfy, and discharge all the debts, liabilities, and obligations of the old company whatsoever, and shall adopt, perform, and fulfil all contracts and engagements now binding on it, and shall at all times keep the old company, its liquidators and contributories, indemnified against such debts, liabilities, obligations, contracts, and engagements, and against all actions, proceedings, costs, damages, claims, and demands, in respect thereof.

New company
to pay costs of
winding up
old company.

3. As a further part of the consideration of the said sale, the new company shall pay and at all times hereafter keep the old company, its liquidators and contributories, indemnified against all the costs and expenses of and incident to the winding up of the old company, and of carrying the said sale into effect.

Shares in new
company to
be allotted to
members of
old company.

4. As the residue of the consideration for the said sale every member of the old company shall, in respect of each share therein held by him, be entitled [at any time before the — day of — next] to require the new company to allot to him, or to his nominee or nominees, one 5*l.* share in the new company with the sum of 5*l.* credited as having been paid up thereon, and any member of the old company who shall take the benefits by this clause offered to him, shall accept the same in full satisfaction and discharge of all claims and demands in respect of his interest in the assets of the old company.

Suppose the shares in the old company to be 10*l.*, fully paid up, and that it is desired to return 5*l.* per share to the members. In such case, if the new company is to have power to call up the amount again, the clause will provide, that every member, &c., shall be entitled, &c., "to require the new company to pay to him the sum of 5*l.* in cash, and to allot to him or to his nominee or nominees one 10*l.* share in the new company, with the sum of 5*l.* credited as having been paid up thereon." If the new company is not to have power to call up the 5*l.* again, the shares will be 5*l.* each, and will be allotted as fully paid up. Of course, instead of cash, debentures or other securities may be issued.

Provision for
payment of
dissentients.

5. If the liquidators of the old company shall, in order to carry the said sale into effect, have occasion to purchase the

interest of any member of the old company, then and in every or any such case the new company shall be relieved from the obligation imposed on it by Clause 4 hereof as regards such member, but shall pay to the liquidators for the purpose of effecting such purchase such sum as, by arbitration between the old company and such member, or by agreement made with the sanction of the new company between him and the liquidators of the old company, shall be determined to be the price payable in respect of such purchase.

Forms.

6. The new company shall accept, without investigation, the title of the old company, to all the real and personal property and premises agreed to be hereby sold. Title accepted.

7. The old company and its liquidators shall, as soon as conveniently may be (but without prejudice to Clause 8 hereof), execute and do, at the expense of the new company, all such assurances and things as shall be reasonably required by the new company for vesting in it the said property agreed to be hereby sold, or any part thereof, and giving to it the full benefit of this agreement; and in the meantime (subject as aforesaid), the old company shall stand possessed of the property agreed to be hereby sold in trust for the new company, and it shall be lawful for that company in the name or names of the old company or its liquidators, but keeping them indemnified against all costs and damages which might arise thereby, to bring, take, and defend actions and proceedings, and to do all other things which shall be necessary or expedient for obtaining the full benefit of the said sale. Delivery.

8. Provided always that the old company and its liquidators shall have a lien upon the whole of the property agreed to be hereby sold for all monies (if any) payable by the new company under Clause 5 hereof, and until the same shall have been paid the said liquidators shall be at liberty to retain the possession of all or any part of the said property, and thereout at their discretion to raise and pay such monies or any part thereof. Lien in favour of dissentients.

As to this clause, see *supra*, p. 484; in this case, as there is uncalled capital, it might, perhaps, be omitted.

9. Notwithstanding anything herein contained, if, in order to carry the said sale into effect, it would be necessary for the Power to rescind.

Forms.

liquidators to purchase the interests of members holding more than — shares in the old company, the new company shall be at liberty by notice in writing, addressed to the liquidators of the old company and left at the registered office of that company, to rescind this agreement.

This clause is not at all unusual. There might happen to be so many dissentient members of the old company that the new company could not find the means to pay them off, and in such case it is convenient to give a power of rescission.

Agreement
not to operate
as convey-
ance.

10. These presents are intended to operate as an agreement only, and not as a conveyance, transfer, or assignment.

This clause is frequently used in such agreements presumably in order to prevent any doubt whether the instrument is liable to *ad valorem* duty as a conveyance or transfer of any part of the property. See Tilley, 188 *et seq.*

Arbitration.

If any dispute, question, difference, or controversy, shall arise between the said companies parties hereto or between the new company and the liquidators of the old company touching these presents, or the construction hereof, or any clause or thing herein contained, or any matter in any way connected with these presents, or the operation hereof, or the rights, duties, or liabilities of any of the parties hereto in connection with the premises, then and in every or any such case the matter in difference shall be referred to two arbitrators or their umpire, pursuant to and so as with regard to the mode and consequences of the reference and in all other respects to conform to the provisions in that behalf contained in the Common Law Procedure Act, 1854, or any then subsisting statutory modification thereof: and the costs of the old company and its liquidators of and incident to the reference and award shall be paid by the new company: and every or any such reference shall be made a rule of Her Majesty's High Court of Justice upon the application of either party, and such party may instruct counsel to consent thereto for the other parties.

An arbitration clause is very commonly inserted, although some doubt has been felt as to its validity. However, in *Southall v. British Mutual Life Assurance Soc.*, 6 Ch. 614, James, L. J., was of opinion that an arbitration clause did not invalidate an agreement for a sale pursuant to Section 161 of the Act, and Mellish, L. J., concurred. See further as to arbitration, *supra*, p. 33.

IN WITNESS whereof the said parties hereto of the first part have hereunto set their hands, and the said companies parties hereto have caused their respective common seals to be hereunto affixed, the day and year first above written.

Forms.

SCHEME II.

The following is another, very generally adopted, mode of carrying a reconstruction into effect. See *supra*, p. 480, Plan 2.

In this case the object is merely to obtain more extensive powers for the new company.

The following is the agreement :—

AN AGREEMENT, made the — day of —, between Parties.
A., of — and B., of —, on behalf of The — Company,
Limited (hereinafter called the old company), of the one part
and C., of —, as agent for a company intended to be formed
under the Companies Acts, 1862 and 1867, with the name of
The — Company, Limited (hereinafter called the new com-
pany), of the other part : WHEREAS the old company was
incorporated in the year 1873 under the Companies Acts, 1862 Recitals.
and 1867 : AND WHEREAS the nominal capital of the old
company is 300,000£., divided into 30,000 shares of 10£. each :
AND WHEREAS 27,200 of the said shares have been allotted
and are now held by the members of the said company : AND
WHEREAS the full amount of 10£. per share stands credited, in
the books of the old company, as having been paid up on the
said 27,200 shares : AND WHEREAS printed drafts of the
memorandum and articles of association of the new company
have been prepared with the privity of the directors of the old
company and of the said C. : AND WHEREAS the new company
is to be formed to purchase, or otherwise acquire, and under-
take, all or any part of the property, assets, and liabilities, of
the old company, and for other objects set forth in the memo-
randum of association of the new company : AND WHEREAS
the nominal capital of the new company is to be 300,000£.,
divided into 30,000 shares of 10£. each. AND WHEREAS by
the articles of association of the new company it is provided
that the directors thereof shall forthwith adopt and carry into
effect an agreement therein referred to, being these presents :
AND WHEREAS it is intended to procure the old company to
pass special resolutions for a voluntary winding up, appointing
liquidators, and directing them to adopt and carry into effect
this agreement : NOW IT IS HEREBY AGREED AS FOLLOWS :

- Forms.** 1. This agreement is conditional on the adoption hereof
Condition. before the day — of — next, by the liquidators of the old company with the sanction of a special resolution of that company.
- Agreement to sell.** 2. The old company shall sell, and the new company, when incorporated, shall purchase: all and singular the goods [*Ut supra*, p. 489, but omitting the last nine words of the clause.]
- Sometimes a schedule is referred to thus: All the real and personal property of the old company, whatsoever and wheresoever, such sale to include the property specified in the schedule hereto, but not to be confined thereto.
- New company to pay debts of old company.** 3. As a part of the consideration for the said sale, the new company shall pay, satisfy and discharge all the debts, liabilities, and obligations of the old company whatsoever, and shall adopt, perform and fulfil all contracts and engagements now or at the time of such adoption as aforesaid binding on it, and shall at all times keep the old company [*Ut supra*, p. 490.]
- Costs of winding up.** 4. As a further part. [*Ut supra*, p. 490.]
- Allotment of shares in new company to members of old company.** 5. As the residue of the consideration for the said sale the new company shall allot, and at its own expense issue, to or to the nominee or nominees of every member of the old company who shall, within thirty days after the adoption hereof by the liquidators of the old company in manner aforesaid, require the new company so to do, one 10*l.* share in the new company on which the sum of 10*l.* shall be credited as having been paid up in respect of every 10*l.* share in the old company held by him, and every share so allotted shall be accepted in full satisfaction and discharge of all claims and demands by the acceptor upon the assets of the old company on account of the share in respect whereof the same shall have been allotted.
- As to payment of dis-sentients.** 6. If the liquidators of the old company shall in order. [*Ut supra*, p. 490.]
- Title accepted.** 7. The new company shall accept. [*Ut supra*, p. 491.]
- When sale to take effect.** 8. The sale agreed to be hereby made shall take effect as from the date hereof, and, until the completion thereof, the old company shall stand possessed of the property agreed to be hereby sold, and shall carry on its business in trust for the new company.
- Delivery.** 9. The old company and its liquidators shall as soon as conveniently may be after the adoption hereof by the said liquidators in manner aforesaid (but without prejudice to Clause 1

hereof), execute and do, at the expense of the new company, all such assurances and things as shall be reasonably required by the new company for vesting in it the property agreed to be hereby sold, or any part thereof, and giving to it the full benefit of this agreement, and in the meantime it shall be lawful for the new company in the name or names [*Supra*, p. 491.]

Forms.

10. Provided always, that the old company. [*Ut supra*, p. 491.]

Lien in favour of dissentients.

11. If this agreement shall not, before the — day of — next, be adopted by the liquidators of the old company with the sanction of a special resolution of that company, and also by the new company, it shall thereupon become void to all intents and purposes.

Agreement if not adopted to become void.

12. When and so soon as this agreement shall become binding on the new company, the said C. shall be discharged from all liability in respect thereof.

When C. to be discharged from liability.

See as to this clause, *supra*, p. 4.

13. Notwithstanding anything herein contained. [*Supra*, p. 491.]

Power to rescind.

14. These presents. [*Supra*, p. 492.]

15. If any doubt, difference, or dispute shall arise between the said companies, or between the new company and the liquidators of the old company. [*Supra*, p. 492.]

Arbitration.

As WITNESS the hands of the said parties hereto the day and year first above written.

Sometimes the agreement contains a clause providing that : "The memorandum and articles of association of the new company shall be in the form of the said printed drafts thereof hereinbefore referred to."

This agreement having been executed, the old company will pass the following special resolutions :

That this company be wound up voluntarily, and that —, of —, and —, of —, be and they are hereby appointed liquidators.

That the conditional agreement dated, &c., and made between A. and B., on behalf of this company, of the one part, and C., on behalf of a company intended to be formed with the name of the Z. Company, Limited, of the other part, be and the same is hereby approved.

See *supra*, p. 480.

Forme. That the said liquidators be, and they are hereby authorized and directed, pursuant to Section 171 of the Companies Act 1862, to adopt, on behalf of this company, the said agreement and to carry the same into effect.

See supra. p. 432.

For the further procedure, see *supra.* p. 431.

SCHEME III.

In this case it is supposed that the capital of the existing company is divided into first and second preference, and ordinary shares, and that it is desired to convert the whole capital into shares of uniform denomination, and to issue preference shares to rank in priority to the existing ones.

Assuming that the same course is adopted as in Scheme II. *supra.* p. 433, the capital of the new company will be divided into A and B shares, the former having a preference over the latter. The agreement will be to the same effect, *mutatis mutandis*, as above. p. 433, except that Clause 6 will be as follows:

As the residue of the consideration for the said sale the new company shall allot to, or to the nominee or nominees of every member of the old company, who shall require the new company so to do, one of the said B shares in respect of each 10*l.* ordinary share in the old company held by him, and fifteen of the said B shares in respect of each 5*l.* first preference share in the old company held by him, and two of the said B shares in respect of every 1*l.* second preference share in the old company held by him. The shares so allotted shall be deemed for all purposes to be fully paid up, and every member of the old company excepting shares in the new company in pursuance of this clause shall be deemed thereby to release the old company from all claims and demands in respect of his interest as a member of that company.

The resolutions of the old company will be similar to these, *supra.* p. 435. See, however, *Griffith v. Argentine Tramways Co.* mentioned in the Addenda, *supra.* as to the validity of such a scheme.

SCHEME IV.

The following form of agreement is based on one which was recently used in the reconstruction of an important company having only a small number of members. The members were all creditors of the company in respect of monies lent to it on debentures and otherwise. There were also outside creditors to a considerable amount. The object of the reconstruction was to raise funds to pay outside creditors and to carry on the business, to capitalize arrears of interest, and to effect other arrangements. All the members were parties to the agreement.

AN AGREEMENT made the — day of — between the several persons whose names are set forth in the first schedule hereto of the first part, the several persons whose names are set forth in the second schedule hereto of the second part, the several persons whose names are set forth in the third schedule hereto of the third part, the several persons whose names are set forth in the fourth schedule hereto of the fourth part, and the C. Company, Limited, hereinafter called the new company, of the fifth part : WHEREAS in the year — a company (hereinafter referred to as the old company) was incorporated under the Companies Act, 1862, by the name of the — Company, Limited, with the objects of purchasing and carrying into operation a concession granted by H. M. the King of —, for &c., and for other purposes set forth in the memorandum of association thereof: AND WHEREAS the old company purchased the said concession, and has duly complied with the conditions thereof, and the same is now in full force : AND WHEREAS the capital of the old company is 60,000*l.* divided into 6,000 shares of 10*l.* each : AND WHEREAS all the said shares have been taken : AND WHEREAS, in pursuance of a provision made by Clause — of the articles of association of the old company, the sum of 15,000*l.* required for the purposes of the undertaking, was contributed by some of the members as a loan to the old company, and the said sum with interest thereon up to the — day of — last, amounting to 12,060*l.* 10*s.* 3*d.*, is now owing by the old company : AND WHEREAS, in pursuance of a resolution passed at a general meeting of the old company held on the — day of —, 1867, a sum of 25,000*l.* was raised on debentures of the company for 100*l.* a-piece, bearing interest at the rate of 10 per cent. per annum (hereinafter referred to as debentures of the first issue), and the said sum with interest thereon up to the — day of —, amounting to 14,787*l.* 16*s.* 10*d.*, or thereabouts, is now owing by the old company : AND WHEREAS, in pursuance of a resolution passed at a general meeting of the old company, held on the — day of —, 1870, a sum of 15,000*l.* was authorised to be raised on debentures of the old company, to be issued bearing interest at the rate of 10 per cent. per annum (hereinafter referred to as preferential debentures), and by an agreement, dated the — day of —, 1870, the holders of the debentures of the first issue agreed that the principal and interest to be secured

Forms.

Parties.

Recitals.

Forms.

by the debentures of the second issue should have priority of payment over the debentures of the first issue, but, although money to the amount of 12,000*l.* was actually paid to the old company on credit of the said intended preferential debentures, the debentures were not issued: AND WHEREAS the said sum of 12,200*l.*, part of the said preferential debenture loan with interest thereon up to the — day of — last, amounting to 2,170*l.* 6*s.* 3*d.*, or thereabouts, is now owing by the old company: AND WHEREAS each of the parties hereto of the first part holds the number of shares in the capital of the old company set opposite his name in the first schedule hereto, all which have been fully paid up, and is entitled to the sum in the column headed "Share of 1,500*l.* loan and interest" set opposite to his name in the same schedule as his share of the amount due on the — day of — last for principal and interest in respect of that loan: AND WHEREAS each of the parties hereto of the second part holds debentures of the first issue, the number of which and the amount which on the — day of — last was owing to him thereon for principal and interest, are set opposite his name in the second schedule hereto: AND WHEREAS each of the parties hereto of the third part is entitled to preferential debentures of the company, the number of which, and the amount which on the — day of — last was owing to him in respect thereof for principal and interest is set opposite his name in the third schedule hereto: AND WHEREAS the old company is indebted to divers persons, otherwise than in respect of members' contributions and debenture loans, in sums amounting together to 10,000*l.* or thereabouts: AND WHEREAS the new company was incorporated on the — day of — last, with a view to the reconstruction of the old company: AND WHEREAS the capital of the new company is 138,000*l.*, divided into 8,800 ordinary shares of 10*l.* each, and 400 preference shares of 100*l.* each:

NOW IT IS HEREBY AGREED AS FOLLOWS:—

Resolutions of
old company
to be passed.

1. The members of the old company shall forthwith pass the necessary resolutions for winding-up the old company, appointing a liquidator or liquidators (hereinafter referred to as the liquidator), and directing him or them to adopt and carry into effect this agreement.

Agreement for
sale.

2. The liquidator and the old company shall sell, and the new company shall purchase, all the [*supra*, p. 495].

3. As part of the consideration for the said sale, the new company shall issue to the liquidator 8,710 of its ordinary shares, which shares shall be numbered in the books of the company — to — inclusive, and shall be deemed for all purposes to be fully paid up. The said shares shall immediately after the issue thereof, be converted by the new company into stock to be called "ordinary stock," and the liquidators shall thereupon distribute the same among the parties hereto of the first part in proportion to their respective shares in the capital of the old company and in the principal and interest owing in respect of the said loan of 15,000*l*.

Forms.

Part consideration to be ordinary shares.

4. As further part of the consideration for the said sale, the new company shall issue to the liquidator 398 of its preference shares. Such shares shall for all purposes be deemed to be fully paid up, and shall be forthwith converted into stock to be called preference stock.

Further part to be preference shares.

5. Each of the parties hereto of the second part shall give up to the liquidator his debenture of the first issue, and shall accept a transfer (which shall thereupon be made by the liquidator) of so much of the said preference stock as shall be equal in nominal value to the amount owing to him on the — day of — last for principal and interest on such debentures, in full satisfaction of all claims in respect thereof. So much of the said preference stock as shall not be required for transfer in manner aforesaid, shall be held by the liquidator in trust for the new company.

Debentures of first issue to be surrendered.

6. The new company shall, as further part of the consideration for the said sale, issue to each of the parties hereto of the third part mortgage debentures of the new company to the effect and secured in manner hereinafter specified, for securing an amount of principal money equal to the amount owing to him for principal and interest to the — day of — last on his preferential debentures, and such mortgage debentures shall be accepted in satisfaction of all claims and demands in respect of the said preferential debentures.

Issue of debentures to members of old company.

7. As the residue of the consideration for the said sale, the new company shall pay, satisfy and discharge all the debts, liabilities and engagements of the old company, not hereinbefore specifically provided for, and shall pay the costs of winding up the old company and of carrying the said sale into effect, and shall keep the company and its liquidators indemnified.

New company to pay debts and costs of winding up old company.

Forms.	fied against such debts, liabilities, engagements and costs, and against all actions, &c., in respect thereof.
Title accepted.	8. The new company shall accept [<i>supra</i> , p. 491].
Delivery.	9. The old company and the liquidators shall immediately after the adoption hereof by the liquidator execute and do all such assurances and things as may be necessary for carrying the said sale into full effect, and for giving to the new company the full benefit of the agreement.
New company to borrow monies to pay debts.	10. The new company shall borrow the further sum of 16,000 <i>l.</i> , being the estimated sum required to pay off the debts of the old company (other than the principal and interest of the said loan of £15,000, and the said debenture debts), and to carry on the business of the new company, by issue of mortgage debentures, to the effect, and secured in manner hereinafter specified, to the nominal value of 20,000 <i>l.</i>
Form of mortgage debentures and trust deed.	11. The mortgage debentures to be taken in exchange by the parties of the third part, and those to be issued for raising the said sum of 16,000 <i>l.</i> as aforesaid, shall bear interest at the rate of 10 per cent. per annum on the amount of principal money expressed to be thereby secured, and shall rank rateably with each other, and be in the form, and be payable and secured in the manner expressed by the draft mortgage debentures and draft deed of trust set forth in the fifth schedule hereto.
Members to advance funds to new company.	12. Each of the said parties hereto of the first part, whose name is included in the fourth schedule hereto, shall pay to the new company as his contribution to the said sum of 16,000 <i>l.</i> , to be raised as aforesaid, the sum set opposite his name in the same schedule in exchange for such mortgage debentures as last aforesaid to the nominal amount of 100 <i>l.</i> for every 80 <i>l.</i> so paid by him.
How residue of mortgage debentures to be disposed of.	13. The residue of the said mortgage debentures shall be offered, at 20 per cent. below the nominal value thereof, to the members of the old company in proportion to the number of ordinary shares in the old company held by them respectively. Such offer shall be made by notice in writing, specifying the number of such debentures to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time,

As to issuing debentures at a discount, see *supra*, pp. 184, 418.

or on the receipt of an intimation from the member that he declines to accept the debentures, the same may be offered by the new company for public subscription, or otherwise disposed of as it shall think fit.

These presents [*supra*, p. 492].

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Members.

Name of Member.	Address.	Number of Shares.	Share of £15,000 loan.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Holders of Debentures of the first issue.

Name of Holder.	Address.	Number held.	Amount due.

THE THIRD SCHEDULE ABOVE REFERRED TO.

Holders of Preferential Debentures.

Name.	Address.	Amount due.

Forms.

Forms.

THE FOURTH SCHEDULE ABOVE REFERRED TO.

Members of Old Company who contribute to the Loan to the New Company.

Name.	Amount.

The special resolutions of the old company will be similar to those given above, p. 495, *mutatis mutandis*.

THE FIFTH SCHEDULE ABOVE REFERRED TO.

[*This contained copies of the draft deed of trust and mortgage debenture mentioned in Clause 12.*]

SCHEME V.

The following is a copy of an agreement which was sanctioned by the Court of Chancery. See *In re Imperial Mercantile Credit Association*, 12 Eq. 504. It was framed with the greatest care, and has since served as the basis of many other reconstruction agreements.

Parties.

ARTICLES OF AGREEMENT under seal made the 19th day of July, 1871, between Sir W. J., of —, W. M., of —, F. F. of —, and A. C. S., of —, of the one part, and the Imperial Credit Company, Limited, of the other part:

Recitals.

WHEREAS the Imperial Mercantile Credit Association, Limited (hereinafter called the old company), has a nominal capital of 5,000,000*l.*, divided into 100,000 shares of 50*l.* each: AND WHEREAS a special resolution for the voluntary winding up of the old company was passed and confirmed at general meetings thereof, held respectively on the 28th day of May and the 14th day of June, 1866; AND, by an order of his Honour the then Vice-Chancellor Wood, made on the 26th day of June, 1866, it was ordered that the said voluntary winding up should be continued, but subject to the supervision of the High Court of Chancery: AND WHEREAS by calls made partly before and partly under the said winding up, the shares in the old company have been called up to the amount of 27*l.* 10*s.* in all, leaving 22*l.* 10*s.* per share still uncalled thereon: AND WHEREAS by means of such calls, of the assets realised, and of temporary loans made to the old company or its liquida-

Forms.

tors, the debts proved against or admitted by the old company, other than those due in respect of such loans, have all been paid, except so far as any of the creditors of the old company have omitted to receive any of the instalments which, however, are lying ready to be paid them : AND WHEREAS the old company is under a liability to provide certain sums of money for the completion of certain railway works in which it is interested : AND WHEREAS at the said meeting of the said shareholders of the old company, held on the 14th day of June, 1866, a committee was appointed for the purpose of assisting and advising the liquidators in the administration of the estate of the old company ; and such committee is now composed of the parties hereto of the former part : AND WHEREAS by a circular addressed to the said shareholders, and dated the 6th day of July, 1870, the said committee proposed the formation of a new company, which should take over the assets of the old company remaining unrealised, according to a plan explained in the said circular : AND WHEREAS by a resolution passed unanimously at a meeting of the said shareholders, held on the 4th day of July, 1870, the said plan was approved of, subject to such modifications in the details as the said committee might sanction ; AND a very large number of the said shareholders also individually signified their approval of the same plan, subject to such modifications as aforesaid : AND WHEREAS, after application had been made to the High Court of Chancery for its sanction of an agreement intended to carry the said plan into effect, certain modifications were made in that agreement, which, as so modified, was approved by a special resolution of the old company, passed and confirmed at general meetings thereof, held respectively on the 12th and 31st days of May, 1871 : AND WHEREAS upon the further hearing of the said application on the 12th day of June, 1871, the Vice-Chancellor Bacon, to whose branch of the High Court of Chancery the winding up of the old company is attached, approved of the said agreement as so modified : AND WHEREAS the Imperial Credit Company, Limited (hereinafter called the new company), has since been incorporated under the Companies Acts, 1862 and 1867 ; and the parties hereto of the former part, acting so far as they lawfully may on behalf of the old company, have entered into this agreement, the terms of which correspond with those of the said agreement

Forms.

so approved as aforesaid, and intend to apply for the sanction of the High Court of Chancery to be formally given to it : NOW THESE PRESENTS WITNESS that it is hereby mutually agreed as follows :—

The agree-
ment is con-
ditional.

1. The parties hereto of the former part do not in any case personally undertake any liability hereunder, nor shall the new company be bound hereby further than as this agreement, either as it now stands or with any modifications, shall by the High Court of Chancery be sanctioned and ordered to be carried into effect by the liquidators of the old company.

Agreement to
sell.

2. Subject to the foregoing condition as to the binding force of this agreement, the old company shall sell to the new company which shall purchase: All and singular the real and personal, and heritable or moveable, property, effects, and things in action belonging to the old company, of what nature or kind soever, and wheresoever situate or recoverable, together with the full benefit of all securities, real or personal, heritable or moveable, held by the old company for any of the said things in action; such sale expressly including all cash balances in the hands of the old company or of its liquidators, or at the credit of any banking account of the said liquidators, all arrears of calls on the shares of the old company up to the said amount of 27*l.* 10*s.* per share, and all sums of money recoverable on the ground of misfeasance or breach of trust (a) from any directors of the old company or other persons, whether the same be or not the subject of any Chancery suit now pending, but saving and reserving to the old company its uncalled share capital, and to the said liquidators the power in the meantime before this agreement shall have become binding on them, at their discretion, to realise for the ultimate benefit of the old or new company, as the case may be, all or any part of the property, effects, and things in action hereby agreed to be sold, or the securities for the same.

(a). Where, upon a reconstruction, the old company had transferred to the new one all its "property, estates, and effects, with the appurtenances," including a mortgage, "with the benefit of all securities" for the amount due, it was held that a right of action which the old company had against one of its directors for breach of trust, in respect of the mortgage, did not pass to the new company. *New Westminster Brewery v. Hannah*, W. N. 1876, 215; affirmed on appeal.

Delivery.

3. The old company and its liquidators, immediately on this

agreement becoming binding on them, shall deliver to the new company all such parts of the said property, effects, things in action, and securities as shall be capable of delivery, and they shall, at the cost of the new company, execute and do all such conveyances, assignments, power of attorney, instruments, and things, as the new company shall from time to time reasonably require for carrying the said sale into effect, either as to the whole or as to any part or parts of the property, effects, things in action, and securities, herein comprised, the same to be settled, in case of difference, by and in the chambers of the judge to whose branch of the High Court of Chancery the winding up of the old company is attached ; and, in the meantime, it shall be lawful for the new company, in the name or names of the old company, or its liquidators, but keeping them indemnified against all costs and damages which might arise thereby, to bring and defend actions and suits, and do all other things, either in England or elsewhere, which shall be necessary or expedient for obtaining the full benefit of the said sale.

4. As a part of the consideration for the said sale, the new company shall satisfy all the outstanding debts and liabilities of the old company (including the temporary loans aforesaid) ; as to the said loans, by paying the same according to the terms on which they have been respectively granted ; as to any instalments which any creditors of the old company may have omitted to receive, by paying the same when and as the same shall be duly demanded ; as to such debts (if any) of the old company as have not yet been established, by paying the same when and as they shall be duly established ; and as to all liabilities of the old company, to provide any sums of money for the completion of any railway or other works, and all such other liabilities (if any) of the old company as have not yet been converted into debts, by discharging the same when and as they shall mature ; And the new company shall at all times keep the old company and its liquidators indemnified against the loans, debts, and liabilities hereby agreed to be satisfied by the new company, and against all costs, charges, and expenses in respect thereof.

5. As a further part of the said consideration, the new company shall pay, and at all times keep the old company and its liquidators indemnified against all the costs and expenses, whether past or future, of the winding up of the old company.

Forms.

Debts of old company to be paid by new one.

Costs of winding up of old company.

Forms.

Account to be kept of proceeds of realisation.

6. The amount of all monies which shall be received by the new company from the sale or getting in of or otherwise from or on account of any and every the property, effects, and things in action hereby agreed to be sold, together with interest at the rate from time to time allowed by the London and Westminster Bank on deposits, to be computed according to the practice adopted by the London joint-stock banks with current accounts, on the minimum credit balance, during each calendar month of the account by the present clause directed, shall be carried to the credit of an account to be kept by the new company, but without prejudice to the right of the new company, as owners, to manage, sell, get in, compound, release, and otherwise act at its absolute discretion with relation to the said property, effects, and things in action hereby agreed to be sold, nor shall the new company be under any obligation to preserve, set apart, or specifically account for, any monies of which the amount shall be carried to the credit of the said account, but the application of the credit balance of such account as hereinafter declared shall only create a liability on the part of the new company in the nature of a personal liability to credit or pay the amount so to be applied.

What items to be entered on debit side of account.

7. On the debit side of the account directed by the last preceding clause, there shall be entered all monies paid by the new company under Clauses 4 and 5 hereof, and all costs, charges, and expenses incurred by the new company in or incidental to managing and realising the assets hereby agreed to be sold, including such fair proportion of the salaries paid by the new company, and of their office and other expenses, as may be properly attributable to such realisation; and in case the new company shall deem it advisable for the completion of any railway or other works in which the old company is interested, or otherwise for the improvement of any assets hereby agreed to be sold, to make any advances or investments which the old company is not under liability to make, then the amount of every such advance or investment shall be debited, and the repayment thereof or the returns therefrom shall be credited, in the said account as if the old company had been under liability to make the same; and on all monies debited in the said account interest shall also be debited, until the repayment thereof by means of the said account, at the rate of 5 per cent. per annum or such higher rate as may be 1 per cent. above

the minimum rate of discount at the Bank of England for the time being.

Forms.

8. Subject to reasonable provision being made for contingencies in respect of payments which may subsequently have to be debited with the said account, the credit balance of the said account (hereinafter called the surplus) shall, from time to time, as the residue of the consideration for the said sale, be divided and paid among and to the contributories entitled to participate, and in the proportions in which they shall be entitled to participate in the assets of the old company remaining after payment of its debts.

Provision of periodical distribution among members of old company.

9. Nevertheless, every such contributory shall be entitled to require the new company to allot to him one of its shares, of the nominal amount of 10*l.* for each share in the old company in respect of which he is entitled to participate in the surplus, and from time to time to credit towards the nominal amount of the share so to be allotted, until it shall be thereby paid up to the amount of 7*l.* 10*s.*, all that proportion of the surplus to which in respect of the corresponding share of the old company he may be entitled, except so far as such proportion shall arise from periodical income produced by any assets hereby agreed to be sold, or by any such advances or investments as are hereinbefore permitted to be made for the improvement of assets hereby agreed to be sold.

Option to contributories to take shares in new company.

10. The acceptance of any share in the new company on the footing of the last preceding clause, shall give to the new company the right of receiving, from time to time, for its own benefit, and distributing by way of dividend on its share capital, so much of that proportion of the surplus to which, in respect of the corresponding share in the old company, the acceptor may be entitled, as shall arise from such periodical income as aforesaid, and this as well after as before the share so accepted shall have been paid up to the amount of 7*l.* 10*s.*

Footing on which shares to be taken.

11. The assets hereby agreed to be sold, being of a value far exceeding 7*l.* 10*s.* per share, every share in the new company accepted on the footing of Clause 9 hereof shall, immediately, be deemed to be paid up thereby to the amount of 7*l.* 10*s.*, for all purposes of dividend and otherwise, except the actual paying it up to that amount out of the acceptor's proportion of the surplus, pursuant to the said Clause 9; and the certificate to be given, pending such actual paying up, for shares in

Shares in new company allotted to members of old one to be deemed in part paid up.

Forms.

Issue of liquidation certificates to assenting members.

Assenting members to sign acknowledgment and discharge.

How long shares of new company to be reserved.

Assenting contributories bound by proceedings in liquidation.

the new company, accepted as aforesaid, shall accordingly describe them as paid up to the amount of 7*l.* 10*s.*, pursuant to and subject to this agreement.

12. To those contributories of the old company who shall accept shares in the new company on the footing of clause 9 hereof, the new company shall give certificates, to be called "deferred liquidation certificates," and to be transferable by indorsement, expressing the right of those contributories or of the holders to receive from the new company, in cash, the proper proportion of the surplus, so far as the same shall not arise from such periodical income as aforesaid, and subject to the previous payment thereout of 7*l.* 10*s.* per share on the corresponding share in the new company.

13. Every contributory, on receiving his certificate of shares in the new company, with corresponding deferred liquidation certificates, shall sign and give to the liquidators of the old company an acknowledgment that the same are in full discharge of his proportional interest in the assets hereby agreed to be sold.

14. The new company shall not be bound to reserve any of its shares for allotment to contributories, pursuant to Clause 9 hereof, after the expiration of one calendar month from the date of the sanction of the Court being given to this agreement; but so long as any such shares remain, the directors of the new company may at their discretion, allot them on the terms of the said Clause, but always on condition of the applicant paying up on them to the new company the same amount which would have been paid up on them if they had been claimed at first.

15. Every contributory of the old company who shall accept shares in the new company, shall be bound by all payments and allowances already passed by the said committee in respect of the expenses of the liquidation, and also by all accounts of the surplus which shall from time to time be settled between the new company and the liquidators of the old company, and all questions between any such persons and the new company, which shall not be capable of being determined by any accounts so settled, shall be decided on the application of either party by the Judge to whose branch of the High Court of Chancery the winding up of the old company is attached, or, if such method cannot be resorted to, by arbitration pursuant to the articles of association of the new company.

16. Those contributories of the old company who shall not accept shares in the new company on the footing of Clause 9 hereof, shall have the option of giving notice to the liquidators, not later than seven days after the date of the order sanctioning this agreement, to have the price of their respective interests settled by arbitration in manner provided by the 162nd section of the Companies Act, 1862, and the amount of such value shall be paid by the new company to such contributories respectively, within one calendar month after the award of the arbitrators.

Forms.

Dissentients may claim payment according to section 162 of the Act.

17. Those contributories of the old company who shall require an arbitration under the preceding clause shall be indemnified by the new company from all liability as contributories of the old company.

Dissentients to be indemnified.

18. Those contributories of the old company who shall not accept shares in the new company, or require an arbitration, shall have their respective proportional interests in the assets of the old company paid to them in cash, as the same shall from time to time be realised by the new company.

Provision as to dissentients who fail to give due notice of dissent.

19. Those contributories of the old company who shall come under the terms of Clause 18 hereof, shall be entitled to have the accounts of the assets of the old company taken in the winding up thereof as against the liquidators of the old company and the new company considered as in the nature of a liquidator of the old company: Provided always that any such advance or investment as is provided for by Clause 7 hereof shall, as between the new company and the last-mentioned contributories, be treated as made by the new company on account of the old company.

As to taking accounts.

20. Those contributories of the old company who shall not accept arbitration under Clause 16 hereof, and who shall not signify to the liquidators their acceptance of shares in the new company within one calendar month after the sanction of the Court has been given to this agreement, shall be deemed to come under the terms of Clause 18 hereof.

Which contributories to come under clause 18.

21. Notwithstanding anything herein contained, if default shall be made by the new company in the due payment of any such loan or debt, or the due discharge of any such liability or payment, as in Clauses 4, 5, 16, 17, and 18 hereof respectively mentioned, then, and so often as the same shall happen, the liquidators of the old company shall immediately acquire and enforce a lien or charge on all such of the property, effects, and things

Lien in favour of dissentients, &c.

Forms.

in action hereby agreed to be sold as shall not have been previously realised or converted into money by the new company, and all securities for the same respectively, for the amount, and in trust for the payment or discharge of the loan or debt, liability or payment, with respect to which such default shall have been made, and all costs, charges, and expenses occasioned by such default; but, save as aforesaid, neither the ordinary lien of vendors, nor any other lien or charge, shall exist in favour of the old company or its creditors, on any property, effects, things in action, or securities herein comprised.

As to lien, see *In re Albert Life Assurance Co. Ex parte Western Life Assurance Co.*, 11 Eq. 164, and notes to *Mackreth v. Symons*, White & Tudor, L. C. Eq. 289.

Sureties.

22. This agreement shall not prejudice the rights of any creditor of the old company as against any surety or person not bound by the order of the High Court of Chancery sanctioning it.

How powers of liquidators to be exercised.

23. All powers hereby given to the liquidators of the old company shall be exerciseable by any one or more of them, whatever may be their number, unless it be otherwise expressed in the resolution or order appointing them.

New company to covenant with creditors of old one.

24. The obligations of the new company under Clause 4 hereof shall be undertaken by it, as well towards the respective creditors of the old company, and the other persons in whose favour the liabilities mentioned in the said clause exist, as towards the old company itself; and immediately after the sanction of this agreement by the High Court of Chancery, the new company shall execute a deed, to be settled by the Judge in Chambers, by which it shall covenant both with the said creditors and other persons in respect of the obligations expressed in the said Clause 4, and with the old company and its liquidators, for the general performance by it of this agreement.

IN WITNESS whereof the parties hereto of the former part have hereunto set their hands and seals, and the said Imperial Credit Company, Limited, hath hereunto affixed its common seal, the day and year first above written.

SCHEME VI.

Forms.

The following is a specimen of an Act of Parliament for the reconstruction of a company limited by shares. See *supra*, pp. 113, 473.

*An Act for dissolving the N—— Waterworks Company Limited,
and for re-incorporating the members thereof with others,
and for supplying water to N—— and neighbouring parishes
and places in the county of X——; and for other purposes.*

WHEREAS in the year 1874 certain persons formed them- Societals
selves into a Water Company under the name of the N——
Waterworks Company (Limited), in this Act called “the
limited Company,” for the purpose of supplying water to and
within the parishes, townships, and extra-parochial and other
places of, &c., in the county of X——, and such company was
duly registered under “The Companies Act, 1862 :”

And whereas the present share capital of the limited com-
pany consists of 32,000*l.*, divided into 3200 shares of 10*l.* each,
and the company have not borrowed any money on mortgage :

And whereas it is expedient that the limited company should
be dissolved and re-incorporated, and that the company so to
be incorporated (in this Act called “the company”) be autho-
rised to supply with water the parishes and places aforesaid,
and to make and maintain the reservoir and other works
hereinafter mentioned, and that other powers be given and
provisions made with respect to their undertaking :

And whereas plans and sections showing the lines and levels
of the reservoir authorised by this Act, and also books of
reference containing the names of the owners and lessees, or
reputed owners and lessees, and of the occupiers of the lands
required or which may be taken for the purposes or under the
powers of this Act, were duly deposited with the clerk of the
peace for the county of X——, and are hereinafter respec-
tively referred to as the deposited plans, sections, and books of
reference.

And whereas the objects aforesaid cannot be effected without
the authority of Parliament :

May it therefore please your Majesty that it may be enacted;
and be it enacted by the Queen’s most Excellent Majesty, by
and with the advice and consent of the Lords Spiritual and
Temporal, and Commons, in this present Parliament assem-

Forms.	bled, and by the authority of the same, as follows ; (that is to say,)
Short title.	1. This Act may be cited as the N—— Water Act, 18—.
Provisions of certain general Acts incorporated.	2. "The Companies Clauses Consolidation Act, 1845," Parts I., II., and III. of "The Companies Clauses Act, 1863," "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," and "The Waterworks Clauses Acts, 1847 and 1863," are (except where expressly varied by this Act) incorporated with and form part of this Act.
Interpretation of terms.	3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings, unless there be something in the subject or context repugnant to such construction : the expression "court of competent jurisdiction," or any other like expression in this Act or any Act incorporated herewith, shall be read and have effect as if the debt or demand with respect to which the expression is used were a common simple contract debt, and not a debt or demand created by statute ; and the expression "superior courts" shall include county courts in all cases where the amount of the debt or demand is within the jurisdiction for the time being of county courts.
Limits of Act.	4. The limits of this Act shall be the parishes, townships, extra-parochial and other places of, &c., in the county of X——.
Incorporation of company.	5. From and after the passing of this Act the limited company shall be dissolved, and the several persons and corporations who immediately before the passing of this Act were members of that company and all other persons and corporations who have subscribed to or who shall hereafter become proprietors in the undertaking of the company, and their executors, administrators, successors, and assigns respectively, shall be and they are hereby united into a company for the purpose hereinafter mentioned, and shall be incorporated by the name of the N—— Water Company, and by that name shall be a body corporate, with perpetual succession and a common seal, with power to purchase, take, hold, and dispose of lands and other property for the purposes of this Act.
General purposes of the company.	6. The company shall be established for the purpose of maintaining and from time to time renewing, extending, and enlarging the existing works of the limited company, and for

making and maintaining the reservoir and works by this Act authorised, and for supplying water by meter or otherwise to and within the limits of this Act, and for selling or letting on hire meters and other materials necessary or desirable for such supply, and for other the purposes of this Act.

7. Subject to the provisions of this Act, all the undertaking, lands, works, erections, buildings, rights, and easements which immediately before the passing of this Act were vested in the limited company or any person in trust for them, or to which the limited company were in anywise entitled, and all mains, pipes, plant, stock, meters, effects, matters, and things which have been by them purchased, provided, laid down, or erected, or which immediately before the passing of this Act were the property of the limited company, and all moneys, securities, credits, effects, and other property whatsoever which immediately before the passing of this Act belonged to the limited company or to any trustee on their behalf, and the benefit of all contracts and engagements entered into by or on behalf of the limited company, and immediately before the passing of this Act in force, shall be and the same are hereby vested in the company to the same extent and for the same estate and interest as the same were previously to the passing of this Act vested in the limited company or any trustee on their behalf, and may according to the provisions of this Act be held and enjoyed, sued for and recovered, maintained, altered, discontinued, removed, dealt with, and disposed of by the company as they think fit.

8. Subject to the provisions of this Act, the memorandum and articles of association of the limited company shall, as to any prospective operation thereof, be wholly void, and the company and the shareholders shall be exempted from all the provisions, restrictions, and requirements of any Act which applied to the limited company and the members thereof as such, but nothing in this Act contained shall release or discharge any person from any liability or obligation in respect of any breach of the provisions of the said memorandum or articles of association incurred before the passing of this Act, but such liability or obligation in respect of any such breach shall continue, and, save as in this Act otherwise provided, may be enforced by or on behalf of the company as nearly as may be in like manner as the same might have been enforced by or

Forms.

Present property of limited company vested in company incorporated by this Act.

Memorandum and articles of association of the limited company to be void, without prejudice to remedies for antecedent breaches thereof.

Forms.

Nothing to
affect previous
rights and
liabilities.

on behalf of the limited company if this Act had not been passed.

9. Except as is by this Act otherwise expressly provided, everything before the passing of this Act done or suffered by or with reference to the limited company, or the members thereof as such, shall be as valid as if the company had not been incorporated, and the said memorandum and articles of association had not been avoided by this Act, and such incorporation and avoidance and this Act respectively shall accordingly be subject and without prejudice to everything so done or suffered, and to all rights, liabilities, claims, and demands, both present and future, which, if the company were not incorporated, and the said memorandum and articles of association were not avoided by this Act, and this Act were not passed, would be incident to or consequent on any and everything so done or suffered, and with respect to all such rights, liabilities, claims, and demands, the company and its shareholders and property shall to all intents and purposes represent the limited company and the members thereof as such, and the property of the limited company, as the case may be, and the generality of this enactment shall not be restricted by any of the other clauses and provisions of this Act.

Contracts
prior to Act
to be binding.

10. Except as is by this Act otherwise specially provided, all purchases, sales, conveyances, grants, assurances, deeds, contracts, bonds, and agreements entered into or made before the passing of this Act, by, to, or with the limited company, or any trustees or persons acting on behalf of the limited company, or by, to, or with any other person to whose rights and liabilities they have succeeded and now in force, shall be as binding and of as full force and effect in every respect against or in favour of the company, and may be enforced as fully and effectually, as if, instead of the limited company or the trustees or persons acting on behalf of the limited company, the company had been a party thereto.

Actions, &c.,
not to abate.

11. Nothing in this Act contained shall release, discharge, or suspend any action, suit, or other proceeding at law or in equity which was pending by or against the limited company, or any member thereof in relation to the affairs of the limited company, or to which the limited company, or any member thereof in relation to such affairs, were parties immediately before the passing of this Act ; but such action, suit, or other

proceeding may be maintained, prosecuted, or continued by or in favour of or against the company (as the case may be) in the same manner and as effectually and advantageously as the same might have been maintained, prosecuted, or continued by or in favour of or against the limited company, or any member thereof, if this Act had not been passed, the company and the shareholders therein being in reference to the matters aforesaid in all respects substituted for the limited company and its members respectively.

Forms.

12. Every trustee or other person in whom or in whose name any lands, works, buildings, easements, rights, property, or effects belonging to the limited company were vested immediately before the passing of this Act, and who (being authorised so to do) entered into any bond, covenant, contract, or engagement in respect of the same, or otherwise, on behalf of the limited company, shall be indemnified out of the funds and property of the company against all liability (including costs, charges, and expenses) which he may sustain or incur or be put to by reason of his having entered into such bond, covenant, contract, or engagement.

Trustees of limited company to be indemnified.

13. From and after the passing of this Act, and except as is by this Act otherwise expressly provided, the company shall in all respects be subject to and shall discharge all obligations and liabilities to which the limited company, immediately before the passing of this Act, were subject, and shall indemnify the members, directors, officers, and servants of the limited company, and their respective representatives, from all such obligations and liabilities, and from all expenses and costs in that behalf.

Company to satisfy liabilities of limited company.

14. All water rates or rents, meter rents, and sums of money which, immediately before the passing of this Act, were due or accruing to the limited company, shall be payable to and may be collected and recovered by the company in like manner as if they had become payable for the like matters supplied or done under this Act.

Recovery of water rents, &c.

15. All persons who, immediately before the passing of this Act, owed any money to the limited company, or to any person on their behalf, shall pay the same, with all interest (if any) due or accruing upon the same, to the company, and all debts and moneys which, immediately before the passing of this Act, were due or recoverable from the limited company,

As to payment of debts owing before passing of Act.

Forms.

or for the payment of which the limited company were, or, but for this Act, would be liable, shall be paid, with all interest (if any) due or accruing upon the same, by or be recoverable from the company.

Certificates,
&c., to re-
main in force.

16. Notwithstanding the avoidance of the said memorandum and articles of association, all certificates (until cancelled under the powers of this Act), sales, transfers, and dispositions heretofore made or executed under them for and with respect to any shares in the limited company shall remain in full force, and continue and be available in all respects as if they had not been avoided.

Books, &c.,
continued
evidence.

17. All documents, books, and writings which, if the said dissolution and avoidance had not taken place, would have been receivable in evidence, shall be admitted as evidence in all courts of law and equity and elsewhere, notwithstanding such dissolution and avoidance.

Officers to
continue until
removed.

18. All officers and servants of the limited company who were in office immediately before the passing of this Act shall hold and enjoy their respective offices and employments, together with the salaries and emoluments thereunto annexed, until they shall resign the same or be removed therefrom by the company, and shall be subject and liable to the like conditions, obligations, pains, and penalties, and to the like powers of removal, and to the like rules, restrictions, and regulations in all respects whatsoever as if they had been appointed under this Act.

Present re-
gisters of
members to
be continued.

19. The books kept by the limited company for entering the names and designations of the members thereof, with the numbers of their shares, and the proper distinguishing number of such shares, shall and may continue to be kept for the same purpose by the company, and shall, until some other register of shareholders shall be provided by the company, be taken and considered as the register of shareholders required to be kept by the Companies Clauses Consolidation Act, 1845.

Capital.

20. The capital of the company shall be 48,000*l.*, whereof 32,000*l.* is in this Act called the original capital, and 16,000*l.* is in this Act called the additional capital, and shall be raised in manner hereinafter mentioned, and the original capital shall be divided into 3,200 shares of 10*l.* each, which shares are in this Act called the "old shares," and the company may con-

vert into stock the whole or any part of their original or additional capital when fully paid up. **Forms.**

21. The old shares shall be vested in the several persons who immediately before the passing of this Act were the registered members of the limited company, share for share, in substitution for the existing shares of the limited company, and every share so vested shall be subject to the same liability for calls, and subject and liable to the same trusts, powers, provisions, declarations, agreements, charges, liens, and incumbrances as immediately before the passing of this Act affected the share for which the same is substituted, and so as to give effect to and not revoke any testamentary disposition of or affecting the same.

Vesting of old shares in present shareholders.

22. The company shall call in and cancel the existing certificates of shares in the limited company, and issue in lieu thereof certificates in the form and under the conditions prescribed by the Companies Clauses Consolidation Act, 1845, but the holders of such existing certificates of shares shall not be entitled to any certificates of proprietorship under this Act until they shall have delivered up to the company to be cancelled the certificates of proprietorship issued to them before the passing of this Act, or shall have proved to the reasonable satisfaction of the company the loss or destruction thereof.

Company shall call in and cancel existing share certificates and issue new certificates in lieu thereof.

23. The company shall not in any one year make out of their profits any larger dividend on their additional capital to be raised under the powers of this Act than 7% in respect of every 100% actually paid up of such capital as shall be issued as ordinary capital, or 6% in respect of every 100% actually paid up of such capital as may be issued as preference capital.

Profits of the company limited.

24. The company may, subject to the provisions of Part II. of the Companies Clauses Act, 1863, raise the additional capital of 16,000% by this Act authorised by the issue, at their option, of new ordinary shares or stock, or new preference shares or stock, or wholly or partially by any one or more of those modes.

Power to raise additional capital.

25. Any new shares, whether ordinary or preference, issued under this Act, shall be of a nominal amount not less than 10%.

As to amount of new shares.

26. The company shall not issue any share created under the authority of this Act, nor shall any such share vest in the person or corporation accepting the same, unless and until a

Shares not to issue until one fifth paid up.

- Forms.** sum not being less than one-fifth of the amount of such share is paid in respect thereof.
- Calls.** 27. One-fifth of the amount of a share shall be the greatest amount of a call, and two months at least shall be the interval between successive calls, and three-fourths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.
- Power to divide shares.** 28. Subject to the provisions of this Act, the company, with the authority of three-fourths of the votes of the shareholders present in person or by proxy at a general meeting of the company specially convened for the purpose, may from time to time divide any share in their capital into half shares, of which one shall be called "preferred half share," and the other shall be called "deferred half share," but the company shall not so divide any share under the authority of this Act unless and until not less than 60 per cent. upon such share has been paid up, and upon every such division 50 per cent. upon the entire share shall be carried to the credit of the deferred half share (being the whole amount payable thereon), and the residue to the credit of the preferred half share.
- Dividends on half shares.** 29. The dividend which would from time to time be payable on any divided share if the same had continued an entire share shall be applied in payment of dividends on the two half shares in manner following; (that is to say), first in payment of dividend, after such rate, not exceeding 6 cent. per annum, as shall be determined once for all at a general meeting of the company specially convened for the purpose, on the amount for the time being paid up on the preferred half share, and the remainder, if any, in payment of dividend on the deferred half share, and the company shall not pay any greater amount of dividend on the two half shares than would have from time to time been payable on the entire share if the same had not been divided.
- Dividend on preferred shares to be paid out of the profits of the year only.** 30. Each preferred half share shall be entitled out of the profits of each year to the dividend which may have been attached to it by the company as aforesaid in priority to the deferred half share bearing the same number; but if in any year ending the 31st day of December there shall not be profits available for the payment of the full amount of dividend on any preferred half share for that year, no part of the deficiency shall be made good out of the profits of

any subsequent year, or out of any other funds of the company.

Forms.

31. Forthwith after the creation of any half share the same shall be registered by the directors, and each half share shall bear the same number as the number of the entire share certificate in respect of which it was issued, and the directors shall issue certificates of the half shares accordingly, and shall cause an entry to be made in the register of the entire shares of the conversion thereof, but the directors shall not be bound to issue a certificate of any half share until the certificate of the existing entire share be delivered to them to be cancelled, unless it be shown to their satisfaction that such certificate is destroyed or lost, and on any certificate being so delivered up the directors shall cancel it.

Half shares to be registered and certificates issued.

32. The terms and conditions on which any preferred half share or deferred half share created under this Act is issued shall be stated on the certificate of each such half share.

Terms of issue to be stated on certificates.

33. The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the forfeiture of shares for non-payment of calls, shall apply to all preferred half shares created under the authority of this Act, and every such preferred half share shall for that purpose be considered an entire share, distinct from the corresponding deferred half share, and until any forfeited preferred half share shall be sold by the directors, all dividends which would be payable thereon if the same had not been forfeited shall be applied in or towards payment of any expenses attending the declaration of forfeiture thereof, and of the arrears of calls for the time being due thereon, with interest.

Forfeiture of preferred shares.

34. No preferred half share created under the authority of this Act shall be cancelled or be surrendered to the company.

Preferred shares not to be cancelled or surrendered.

35. The several half shares under this Act shall be half shares in the capital of the company, and every two half shares (whether preferred or deferred, or one of each) held by the same person shall confer such right of voting at meetings of the company, and (subject to the provisions hereinbefore contained) shall confer and have all such other rights, qualifications, privileges, liabilities, and incidents as attach and are incident to an entire share.

Half shares to be half shares in capital.

36. Profits of the limited company, by this Act vested in the company, shall, for the purpose of dividends, be deemed

Profits of existing company to be

Forms.	profits of the company, and shall be applicable to dividend among the proprietors of the company.
applicable to dividend of company.	37. If any money is payable to a shareholder being a minor, idiot, or lunatic, the receipt of the guardian or committee of his estate shall be a sufficient discharge to the company.
Receipt of guardian, &c.	38. [<i>Representation of company in bankruptcy.</i>]
Dividends on different classes of stock or shares to be paid rateably.	39. In case in any half year the net revenues of the company applicable to dividend shall be insufficient to pay the full amount of the prescribed maximum rate of dividend on each class of ordinary stock or shares in the capital of the company, a rateable deduction shall be made in the dividend of each class.
	40. [<i>Power to borrow on mortgage.</i>]
As to conversion of borrowed money into capital.	41. The company shall not have power to raise the money by this Act authorised to be borrowed on mortgage, or any part thereof, by the creation of shares or stock instead of borrowing, or to convert into capital the amount borrowed under the provisions of this Act, unless in either case all dividends upon the shares or stock are limited to a rate not exceeding 5l. per cent. per annum.
For appointment of a receiver.	42. The mortgagees of the company may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a receiver. In order to authorise the appointment of a receiver in respect of arrears of principal, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than 100l. in the whole.
Debenture stock.	43. The company may create and issue debenture stock, subject to the provisions of Part III. of the Companies Clauses Act, 1863 ; but, notwithstanding anything therein contained, the interest of all debenture stock at any time created and issued by the company shall rank <i>pari passu</i> with the interest of all mortgages at any time hereafter granted by the company, and shall have priority over all principal monies secured by such mortgages.
Priority of mortgages and debenture stock over other debts, &c.	44. All monies raised on mortgage by the company under this Act, and the interest due thereon, and the interest due on debenture stock created and issued under this Act, shall have priority against the company, and the property from time to time of the company, over all other claims on account of debts incurred or engagements entered into by the company after

the passing of this Act ; but this priority shall not affect any claim against the company in respect of any rentcharge to be granted by them in pursuance of the Lands Clauses Consolidation Act, 1845, or, the Lands Clauses Consolidation Acts Amendment Act, 1860, or in respect of any rent or sum reserved by or payable under any lease to be granted or made to the company by any person in pursuance of any Act relating to the company, which is entitled to rank in priority to or *pari passu* with the interest or dividends on the mortgages and debenture stock, nor shall anything hereinbefore contained affect any claim for land taken, used, or occupied by the company for the purposes of their works or injuriously affected by the construction thereof, or by the exercise of any powers conferred on the company.

Forms.

45. All moneys raised under this Act, whether by shares, stock, debenture stock, or borrowing, shall be applied for the purposes of this Act only.

Application
of moneys.

46. The first ordinary meeting of the company shall be held within six months after the passing of this Act.

First ordinary
meeting.

47. The number of directors shall be six, but the company may from time to time reduce the number, provided that the number be not less than four.

Number of
directors.

48. The qualification of a director shall be the possession in his own right of not less than thirty shares.

Qualification
of directors.

49. The quorum of a meeting of directors shall be three.

Quorum.

50. W—— H——, J—— F—— H——, C—— F——, J—— R——, A—— S——, and F—— W——, shall be the first directors of the company, and shall continue in office until the first ordinary meeting held after the passing of this Act. At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Act, or any of them, or may elect a new body of directors, or directors to supply the place of those not continued in office, the directors appointed by this Act being, if qualified, eligible for re-election ; and at the first ordinary meeting to be held in every year after the first ordinary meeting, the shareholders present in person or by proxy shall (subject to the power hereinbefore contained for reducing the number of directors) elect persons to supply the places of the directors then retiring from office, agreeably to the provisions of the Companies Clauses Consolidation Act, 1845, and the

First
directors.

Election of
directors.

Forms.

several persons elected at any such meeting, being neither removed nor disqualified, nor having died or resigned, shall continue to be directors until others are elected in their stead, in manner provided by the same Act.

Contracts not to disqualify for office of director.

51. Any contract to be made under this Act with any local board, corporation, or public body, shall not disqualify any of the members of any such local board, corporation, or public body for the office of director of the company, and no director or shareholder of the company shall be disqualified for the office of director of the company by reason of any contract between him and the company for any loan of money to the company, or for renting any land of the company; but no director of the company, being a member of any such local board, corporation, or public body, shall vote upon any question relating to any contract between the company and such local board, corporation, or public body.

Power to purchase lands by agreement.

52. The company may, for the purposes of their undertaking, purchase, take, and hold (by agreement, but not otherwise), in addition to the lands delineated on the deposited plans and described in the deposited book of reference, any lands and hereditaments not exceeding in the whole five acres, and any springs or sources of water which the company may from time to time require for the purposes of their works and undertaking.

Power to take easements, &c., by agreement.

53. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act and of the Lands Clauses Consolidation Acts Amendment Act, 1860, and of this Act, grant to the company any easement, right, or privilege in, over, or affecting any lands (not being an easement, right, or privilege of water) required for the purposes of this Act in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rent-charges, as far as the same are applicable in this behalf, shall extend and apply to such grants or to such easements, rights, or privileges as aforesaid.

Company may maintain and renew works.

54. The company may, from time to time, repair, renew, or reconstruct, upon the present site thereof, any existing works vested in them by this Act.

Power to make water-works.

55. Subject to the provisions of this Act, the company may make and maintain, in the line and according to the levels

Forms.

shown on the deposited plans and sections, an underground reservoir or tank in or near the north-western corner of a field known as, &c., late in the occupation of —, at —, in the parish of —, in the county of, &c., and the heading or tunnel commencing in and out of the said reservoir or tank, and terminating in the road towards which the said field abuts, shown on the deposited plans and sections, together with all necessary and convenient adits, engines, buildings, works, and conveniences connected therewith respectively, and may enter upon, take, and use such of the lands delineated on the said plans, and described in the deposited books of reference, as may be required for any of those purposes, and may collect and impound into the said reservoir and works, and into the existing reservoirs and works of the limited company, and thence distribute, all or any springs and waters on the site of any of the works by this Act authorised, or any of the existing works of the limited company.

56. The powers of the company for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of three years from the passing of this Act.

Period for compulsory purchase of lands.

57. Except as in this Act otherwise provided, the company, in constructing the works by this Act authorised, may deviate laterally from the lines thereof, as shown on the deposited plans, to the extent of the limits of lateral deviation marked or described in writing thereon, and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding five feet upwards or ten feet downwards.

Limits of deviation.

58. If the waterworks authorised by this Act, and shown on the deposited plans, are not completed within five years from the passing of this Act, then, on the expiration of that period, the powers by this Act granted to the company for executing the same, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as is then completed, but nothing herein contained shall restrict the company from extending, enlarging, altering, or removing any of their engines, machinery, mains, or pipes, from time to time, as occasion requires, for supplying water within the limits in that behalf of this Act.

Period for completion of works.

59. The company may from time to time let on lease or on fee-farm rent or otherwise, and also, either before or after making any demise thereof, absolutely sell and dispose of, to

Company may let or sell superfluous lands; reser-

Forms.

vation of;
water rights,
&c., on sale.

such persons and in such manner as the company think fit, any lands or works by this Act vested in them or acquired by them under this Act which they do not require for the purposes of their undertaking (subject nevertheless in the case of all lands, except lands of the existing company by this Act vested in the company, to the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands), and on the sale by the company of any lands or works (whether vested by this Act or acquired under it) they may reserve to themselves all or any part of the water or water rights or other easements belonging thereto, and may make the sale subject to such reservations accordingly, and may also make any such sale subject to such other reservations, special conditions, restrictions, and provisions with respect to use of water, exercise of noxious trades, or discharge or deposit of manure, sewage, or other impure matter as they think fit.

60. [*Constant pressure not necessary.*]

61—63. [*Rates for supply.*]

64. [*Rent for water may be ascertained by meter.*]

65. [*Power to sell or let meters.*]

66. [*Proviso to prevent fouling water.*]

67. [*Regulations for preventing waste, &c., of water.*]

Company may
purchase
existing
water-works
of other com-
panies, &c.

68. The company, with the sanction of the votes of three-fourths of the shareholders present in person or by proxy at a general meeting of the company convened with notice of the object, may acquire by agreement from any other company or person possessed of waterworks within the limits of this Act their and each and every of their lands and buildings, waterworks, reservoirs, mains, or pipes, and other works and conveniences, for the supply of water within the limits of this Act, upon such terms and conditions, pecuniary or otherwise, as the company and such other company or other person may agree, and such other company or person may, if they think fit, accept as the consideration, or as part of the consideration, for such sale and transfer, and may hold shares in the capital of the company, but the company shall not under any circumstances hold more than fifteen acres of land at any one time, nor shall they erect, or authorise, or permit the erection on any lands, whilst the same are held by them, of any buildings other than buildings necessary for or connected with their waterworks.

69. [*Power for company to agree for supply of water for other than domestic purposes.*] Forms.

70. [*As to entry on premises to cut off supply.*]

71. [*Mode of giving notice before cutting off supply.*]

72. [*Service pipes.*]

73. [*Power to remove meters and fittings.*]

74. [*Notice to company of putting up meters, &c.*]

75. [*As to repair of meters.*]

76. [*Register of meter, prima facie evidence.*]

77. [*As to penalties for injuring meters, &c.*]

78. [*As to preventing frauds and waste.*]

79. [*Power for company to supply materials, &c.*]

80. [*Incoming tenant not liable for arrears.*]

81. [*Company not bound to supply several houses by one pipe.*]

82. [*As to supply of several houses by one pipe.*]

83. [*Water pipes to be distinguished from gas pipes.*]

84. [*As to notice to gas company before opening streets.*]

85. [*As to recovery of sums due by distress.*]

86. [*Notice of discontinuance of supply.*]

87. [*Liability to water rent not to disqualify justices, &c.*]

88. [*Contents of summons, &c.*]

89. [*Cost of distress.*]

90. [*Penalties not cumulative.*]

91. All costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the company. Expenses of Act.

AMALGAMATION.

INTRODUCTORY NOTES.

THE word "amalgamation" is used in several senses. In Parliamentary language, and particularly in reference to railway companies, it is commonly used in the technical sense given to it by Part V. of the Railway Clauses Act, 1868 (26 & 27 Vict. c. 92).

Meaning of word amalgamation in 26 & 27 Vict. c. 92.

By Section 36 of this Act it is provided that—

"This part of this Act shall apply where two or more railway companies, respectively incorporated either before or after the passing of this Act, are *amalgamated* by a special Act hereafter passed and incorporating this part of this Act."

And Section 37 is as follows :—

"For the purposes of this part of this Act, companies shall be deemed *amalgamated* by a special Act in either of the following cases :

1. Where by special Act two or more companies are dissolved, and the members thereof respectively are united into and incorporated as a new company :
2. Where by special Act a company or companies is or are dissolved, and the undertaking or undertakings of the dissolved company or companies is or are transferred to another existing company, with or without a change in the name of that company :

And in this part of this Act, such special Act is referred to as the *amalgamating Act* ; the company incorporated or continued by or under the *amalgamating Act* is referred to as the *amalgamated company* ; and the time prescribed in the *amalgamating Act* for the *amalgamation* to take effect, and if no time is prescribed, then the time of the passing of the *amalgamating Act* is referred to as the time of *amalgamation*."

But the word *amalgamation* when used in relation to companies subject to the Acts of 1862 and 1867, has no precise signification. A power "to *amalgamate* with any other company having similar objects" is very commonly found in memoranda and articles of association, but no one has yet been able to say positively what such a power authorises.

Meaning of word in reference to limited companies.

Thus in *Higgs' Case* (1865), 2 H. & M. 657, Page-Wood, V.-C., *Higgs' Case*.

said : " I now come to clause 62 of the articles of association, where, among other powers given to the directors, I find the words, ' and may amalgamate with any company carrying on business within any of these objects,' and so on. I do not find any technical definition of the term ' amalgamate,' and I have some difficulty in getting at its exact meaning ; but whatever its definite meaning may be, it certainly does not imply an authority from a shareholder to his directors to execute on his behalf the deed of another company, and so to make him liable in respect of all the engagements of that company. Mr. Jessel says that it consists in making two companies into one ; but that is scarcely sufficient. That might suit the case of two companies whose articles of association were identical, because then the shareholders would be bound by no new stipulations ; all would remain the same except that the business, still similar, would be extended, and the capital would be somewhat larger ; but when you have two companies with different articles, this notion would not apply . . . I should rather assume an amalgamation to be where both companies agree to abandon their respective articles of association, and to register themselves under new articles as one body. That would be a new company formed by the coalition or amalgamation of the two old companies . . . " So also in *Bagshaw's Case*, 4 Eq. 341, decided in 1867, Page-Wood, V.-C., said : " It is difficult to say what the word ' amalgamate ' means, I confess at this moment I have not the least conception of what the full legal effect of the word is. We do not find it in any law dictionary, or expounded by any competent authority. But I am quite certain of this, that the word ' amalgamate ' cannot mean that the execution of a deed shall make a man a partner in a firm in which he was not a partner before, under conditions of which he is in no way cognisant, and which are not the same as those contained in the former deed. It is true that in this instance partners engaged in a concern for the insurance of a particular character, have authorised their directors to amalgamate with another company. It is possible that this authority may go thus far ; it may empower the directors, without being called to account for so doing in this Court, or by any other jurisdiction, to sacrifice, or to give up (which implies something more), the whole of their business, and to transfer their assets,

*Bagshaw's
Case.*

if they think fit, to some other company, allowing that other company to carry on the business on the best terms they can make with them. In carrying out this, the directors may possibly be authorised by the clause to say, "You who do not like this arrangement must simply lose; we have amalgamated one company with the other, and we have placed all your assets in the hands of another concern. But that does not imply that the dissentient shareholders, besides losing all their assets, are personally bound to take their part and lot in the new concern." "I think that this much may be said, that persons who execute those deeds ought to know that the word 'amalgamate' is not a word by which, having subscribed to Company A., they may be compelled to become subscribers of Company B."

In *Dougan's Case* (8 Ch. 540) the Scottish, &c., Insurance Company Limited, which was a Scotch company, had power by its articles of association to sell and dispose of its business to any other company; but the articles contained no express power "to amalgamate" with another company. By an agreement between the Scottish Company and the Empire Assurance Corporation, the company agreed to transfer its business to the corporation on the terms that the corporation should indemnify the company against all its liabilities, and that the members of the company should receive shares in the corporation in exchange for their shares in the company. It was held by the Court of Appeal, James and Mellish, L.JJ. (affirming the decision of Wickens, V.-C.) that the transaction was *ultra vires*, not being a sale within the powers of the company. In the course of his judgment, Mellish, L. J., said that the first question to be decided was, whether the agreement was *ultra vires*. "The Vice-Chancellor held that it was so, on the ground that the power of the Scottish Company to sell and transfer their business to another company only authorised them to sell for some money payment or consideration to be given by one company to the other, and did not authorise a transfer on the terms of the shareholders of the selling company receiving shares in the purchasing company in exchange for shares in their own company. It is observable that there are no special words in the clause giving power to amalgamate with another company; and I cannot help thinking that if it had been intended by the clause that a special general meet-

*Dougan's
Case.*

ing of the Scottish Company should have power absolutely to bind all the shareholders and to hand them over to another company—that, in fact, it should have power to effect what is commonly called an amalgamation, that word would have been made use of On the whole, therefore, I agree with the Vice-Chancellor that this agreement is *ultra vires*.” Wickens, V.-C., when the above case was before him, said, that he believed that nobody really knew what amalgamation meant. *Dougan’s Case*, 28 L. T. 60.

Observations
on cases.

It appears, therefore, that in 1865, Page-Wood, V.-C., thought that the word amalgamation meant the dissolution of two companies, and the incorporation of such of their members as assented to the arrangement as a new company,—for this would appear to be the only mode in which the two companies could become subject to one set of articles; that in 1867 the same Vice-Chancellor thought that a power “to amalgamate” might *possibly* authorise a sale of the assets of one company in consideration of shares in another; that in 1873, Wickens, V.-C., believed that no one really knew the meaning of the word amalgamate; that in the same year, Mellish, L. J., appears to have thought that an amalgamation was a sale in consideration of shares to be allotted to the members of the selling company.

It also appears that whatever may be the meaning of the word amalgamate, a company that has power to amalgamate cannot compel its shareholders to become members of the company with which it agrees to amalgamate.

See further as to the meaning of the word amalgamation, *Stace and Worth’s Case*, 4 Ch. 682.

Meaning of
word in fol-
lowing pages.

In the following pages the words “amalgamation” and “amalgamate” are used indiscriminately to describe two operations :—

- (a.) The transfer of all or some part of the assets and liabilities of one or more than one existing company to another existing company, of which all the members of the transferring company or companies become, or have the right of becoming, members;
- (b.) The transfer of all or some part of the assets and liabilities of two or more existing companies to a new company, of which all the members of the transferring companies become, or have the right of becoming, members.

It will be observed that (b) excludes a reconstruction as already described [*supra*, p. 478 *et seq.*], which is the transfer of the assets of a *single* existing company to a new company.

The word "amalgamation" as used in these pages, moreover, generally involves the notion of the dissolution of the transferring company or companies.

A large company is generally in a much better position to carry on business successfully than a small one. The expense of management in a small company is relatively much more burdensome than in a large one, and in order to keep it down a small company is, very commonly, obliged to employ directors and other officers and agents of inferior business capacity. Again, the shares of a small company are, not uncommonly, unsaleable, except perhaps in a local market where the demand may be limited and uncertain. This places a small company at a disadvantage: it may, and often does, find considerable difficulty in placing its original capital, and still greater in raising any further share capital. And not only has a small company difficulty in placing share capital, but it has little or no chance of borrowing on debentures.

Advantages of
amalgama-
tion.

Hence it is that the amalgamation of small undertakings is making rapid progress at the present day. Moreover, there is in many cases another great inducement to amalgamation, namely, the desire to terminate competition. However good competition may be for the public, it is very often ruinous to the parties engaged in it.

An amalgamation may be effected:—

(1.) By special Act of Parliament. This mode is not very often adopted by companies formed under the Acts of 1862 and 1867. See Precedent of an Act, *infra*, p. 533.

By special
Act.

(2.) Under Section 161 of the Companies Act, 1862. This is the mode now generally and successfully adopted.

Under section
161.

(3.) Possibly under a power contained in the memorandum and articles, but in practice this mode is now seldom or never adopted, and it will therefore not be necessary in this work to describe the course of proceeding, or to dwell on the legal and practical difficulties which are likely to result from its adoption.

Under power
in articles.

Amalgamation under Section 161 (supra, p. 476) of the Companies Act, 1862.

Two modes of effecting amalgamation under section 161.

There are two modes of effecting an amalgamation under Section 161 of the Act of 1862. Thus :—

Mode (a).

(a.) Company A. and Company B. desire to amalgamate. Company A. passes a special resolution to wind up, appointing liquidators, and directing them to sell the assets to Company B. in consideration of shares in that company to be allotted to the members of Company A. The liquidators act accordingly, and Company A. is then dissolved.

Mode (b).

(b.) Company A. and Company B. desire to amalgamate. Company C. is formed to acquire their assets and liabilities, and to carry on the amalgamated business. Each of the old companies then passes a special resolution as in the last case, the liquidators carrying the sale into effect, and the old companies are then dissolved.

When above modes adopted.

Mode (a) can only be adopted where one of the companies desiring to amalgamate has power to acquire the property and liabilities of the other or others. See *supra*, p. 106.

Mode (b), on the other hand, is available in every case, and is often adopted even where there is an ample power to purchase, for the circumstances of the companies, or the terms of the amalgamation very commonly render the establishment of a new company necessary.

For example : Companies A. and B. desire to amalgamate. Company B. has full power to acquire the assets of Company A., but has issued preference shares. The members of Company A. will not sanction an amalgamation under which they would have to accept shares, having only a postponed right to dividends, and some of the preference shareholders of Company B. will not surrender their priority. The only way to effect the amalgamation, in spite of this opposition, is by the adoption of mode (b). So, too, it may be, and is not uncommonly essential, or at any rate desirable, that the amalgamated company should have more extensive objects and powers than those of the single companies. Where this is the case, mode (b) must be adopted.

Proceedings

It may be convenient here to follow more closely the course

of proceedings upon an amalgamation in accordance with these two modes. And first, as to mode (a). on amalgamation.

We will suppose that Company A. and Company B. desire to amalgamate; that the directors of Company B. have full power to purchase the assets of Company A.; and that there are sufficient unallotted shares of Company B. at the disposal of the directors thereof. Mode (a).

The first thing is for the directors of the two companies to arrange the terms on which the sale is to be made. They must settle whether the consideration is to consist exclusively of shares, or partly of shares and partly of cash, whether the shares are to be fully or partly paid up, whether Company B. or the liquidator of Company A. is to purchase the interests of dissentients and satisfy the debts of Company A., whether any of the directors of Company A. are to become directors of Company B., and whether Company B. is to compensate any of the officers of Company A. for loss of office, and so forth. Terms.

When the terms are settled they will be embodied in a conditional agreement. See *infra*, p. 541 *et seq.* Notice of the arrangement is then given to the members of Company B. by the directors thereof, and meetings called to pass a special resolution to wind up, appointing a liquidator and directing him to adopt the agreement. The special resolution having been passed, the liquidator adopts the agreement and carries it into effect. Company B. will allot the shares as provided by the agreement; the dissentients will be satisfied as arranged. The debts of Company A. will be paid and liquidated by Company B., or the liquidators of Company A. according to the arrangement. As soon as may be Company A. will be dissolved. Agreement.

It will be observed that the proceedings are very similar to those upon a reconstruction. See *supra*, p. 480.

If the amalgamation is to be effected by a sale to a new company according to mode (b), the terms of amalgamation will be settled between the directors of the companies proposing to amalgamate, and embodied in an agreement made with some person on behalf of the intended new company. Each of the single companies then passes a special resolution as above, and the subsequent course will be the same as above upon an amalgamation according to mode (a). Mode (b).

An amalgamation according to mode (b) closely resembles a reconstruction by means of Section 161, except that it involves the reconstruction of two or more companies, instead of one. See *supra*, p. 478.

How debts of transferring to be paid.

In every case of amalgamation, the question arises whether the debts, costs of winding up the selling company, and the obligation of satisfying the dissentient members of that company, are to be borne by the purchasing company, or not. The chief advantage of throwing the burden on the purchasing company is that the members of the selling company, who will be called on to sanction the arrangement by special resolution, are more likely to do so if they know precisely how many shares in the purchasing company they are to receive, but this cannot be if the selling company is to bear the burden. On the other hand, the purchasing company may not be willing to accept a burden which is more or less indefinite: it may prefer to purchase the assets for a fixed sum.

However, in practice the burden is almost always thrown on the purchasing company.

Where transferring to pay its own debts.

Where the burden of paying the debts, costs of winding up, and obligation of satisfying dissentient members of the selling company or companies, is *not* to be thrown on the purchasing company, the agreement with the purchasing company will be for the sale of the assets in consideration of a definite number of shares in the purchasing company, to be allotted to the liquidators of the selling company or as they direct, and the special resolution of the latter company, besides providing for the winding up, appointment of liquidators, and adoption of the agreement, will direct the liquidators to sell so many of the shares as may be necessary to pay the debts, costs of winding up, and to satisfy dissentients, and to apply the proceeds accordingly, and to distribute the remaining shares among the members.

When special resolution of purchasing company necessary.

In some cases the directors of a company can only acquire the assets of another company with the sanction of their own company in general meeting or by special resolution; and where this is the case as regards a company to which a sale by way of amalgamation is proposed to be made under Section 161, the necessary sanction must be obtained; and it ought to be obtained before the selling company is called on to pass the special resolution for winding up, &c., for it would be a serious

mishap for the latter company if, after the passing of the resolution to wind up, the agreement fell through. The only course would be to reconstruct or to apply to the Court to stay the liquidation. See *infra*, "Petitions," Precedent VIII.

It is very common, upon an amalgamation, to provide that some of the directors of the selling company shall become directors of the purchasing company. Where the amalgamation is effected by means of the formation of and sale to a new company, this is provided for by the articles of the new company; but if the sale is to be to an existing company, it is generally necessary to obtain the sanction of the agreement by special resolution of that company; for the power of appointing directors is almost always vested in the company in general meeting.

As to appointment of directors of selling company to be directors of purchasing company.

Thus in *Stace and Worth's Case*, 4 Ch. 685, the directors of Company L., in order to effect an amalgamation of Company I. with that company, entered into an agreement to purchase the business of Company I. in consideration of shares, and it was thereby provided that certain of the directors of Company I. should be directors of Company L. By the articles of Company L. its directors were to be appointed in general meeting in the usual way. It was held that the stipulation in the agreement as to the directors was *ultra vires* the directors of Company L. James, V.-C., said that: "There was to be an entire change in the constitution of the company, a thing which was quite beyond the power of the directors to stipulate for. That clause seems of itself to make the agreement void, or at least to make it what it really was in fact, a provisional agreement, which was only to take effect when it has been duly confirmed." 4 Ch. 686. This decision was affirmed on appeal (4 Ch. 483), and has recently been approved and followed in *James v. Eve*, 6 H. L. 335.

So, too, it may be necessary to get the sanction of a special resolution of the purchasing company where the agreement involves the creation of new shares by that company.

Sanction if new shares have to be created.

Upon an amalgamation it is by no means uncommon to provide for compensation to such of the directors or other officers of the selling company as are not to take office under the purchasing company.

Compensation to officers of selling company.

This will be effected either by a clause in the agreement to the effect that the purchasing company shall pay the compen-

sation monies, or, where the selling company is to pay its own debts, &c., the liquidators will be authorised by the special resolution (*inter alia*) to raise and pay the compensation monies.

In *Southall v. British Mutual Life Assurance Society*, 6 Ch. 614, an agreement was made for the sale of the assets of the society to the Prudential Assurance Company. The agreement contained a clause providing that each of the directors of the society should receive 600*l.* and the secretary 5,000*l.*, by way of compensation for loss of office. The society passed special resolutions to wind up, apply a liquidator, and directing him to carry out the agreement. An attempt was made to set aside the transactions on the ground, among others, that an agreement to pay the directors a bonus as part of the price of the amalgamation was *ultra vires* and fraudulent. It was held, affirming the decision of Romilly, M. R., valid. James, L. J., said: "It is said, in the first place, that it is a violation of the principles of this Court that the directors should have a bonus of 600*l.* each. I agree that if this had been done secretly, in all probability it would not be supported. But it was done openly, and appeared on the face of the agreement. There was nothing in itself wrong in such an arrangement, and it was known to all the shareholders. They said: 'We are going to get rid of the chairman and the directors, and we think it right that we should give them some compensation.' It would be monstrous to say that a transaction otherwise reasonable could be vitiated by such a clause as this." Mellish, L. J., concurred.

It does not appear from the report that the clause as to compensation was specifically referred to in the notices calling the meetings to pass the special resolution, and it is presumed that it was not. In saying that the arrangement "was known to all the shareholders," James, L. J., no doubt meant that they had constructive notice of it; and this view is borne out by what the M. R. said in reference to the same matter. "It is proper, however, to observe that there was no concealment of these payments, and that, though they were not ostentatiously announced, they were not concealed; and any one who thought fit might have ascertained the exact terms on which the transfer was proposed to be made." 11 Eq. 73.

Assent of in

As above mentioned (p. 478), upon a reconstruction the

assent of individual members is generally sought before the conditional agreement is made. Where possible the same course is pursued in the case of an amalgamation. Sometimes, however, the purchasing company objects to its name being mentioned until after the agreement has been executed, but this does not prevent the issue of a circular seeking assents to the proposed amalgamation with "a" company which may be described, though not named in it. But occasionally the directors of the selling company consider that it is inexpedient to broach the plan prior to the issue of the notices, in order that there may not be time to get up an agitation against it.

individual members to amalgamation.

The notices calling the general meetings to pass the special resolutions should be sufficiently explicit. They should be accompanied by a circular showing the nature of the plan, and, if no previous communication on the subject has been made to the members, the advantages or necessity which should induce its adoption.

Notices prior to special resolution should be sufficient.

The notices ought to contain some reference, direct or indirect, to Section 161 of the Act, particularly if the memorandum or articles contain a power "to amalgamate." In the case of the *Imperial Bank of China, &c., v. Bank of Hindustan, &c.*, 6 Eq. 91, the facts were as follows :—The directors of the two banks entered into an arrangement in the nature of an amalgamation, *i.e.*, for the sale of the assets of the Imperial in consideration of shares in the Bank of Hindustan. A notice was then issued to the members of the Imperial calling a general meeting of that company, "when the agreement entered into with the Bank of Hindustan will be submitted for approval, and resolutions to voluntarily wind up the bank and appoint liquidators will be proposed." At this meeting resolutions were passed (1), to approve the agreement ; (2), to wind up ; (3), appointing liquidators, and authorising them to receive in compensation or part compensation, for the business of the Imperial, shares in the Bank of Hindustan upon the terms specified in the agreement, and directing them as to the mode of raising the funds to pay dissentients. Notices of a meeting for the purpose of confirming these resolutions were then issued : no reference was contained in them to Section 161 ; but the resolutions were set out *in extenso*. They were confirmed. The validity of the transaction was subsequently impeached in the above suit, and it was sought to support it as a valid sale under

Section 161 ; but it was held that the first notice was not sufficient ; that the members were entitled to notice that the proceedings were under Section 161 ; and consequently that the sale was not binding on dissentients. The decision was to some extent influenced by the fact that the articles of the Imperial contained an express power to amalgamate, and that consequently members might assume that the amalgamation was to be effected under that power.

What a sufficient notice.

The judge (Giffard, V.-C.), however, said that the second notice was plain enough : " if anything like that had been put in the first notice it would have been sufficient. I believe it would have been sufficient if the first notice had gone on and said, ' This is to be carried out under the Act ; ' or even short of that, if it had given notice to the parties that it was intended to pass a resolution giving authority to the liquidators to carry out the arrangement." See also *Foz's Case*, 6 Ch. 176.

Usual form of notice.

As the validity of the resolutions depends on the sufficiency of the notices, it is a serious mistake not to render them sufficient beyond dispute, and it is now usual, though as above appears not essential, to refer expressly to Section 161. See also *supra*, pp. 310, 486.

Objects of purchasing company may be more extensive than those of selling company.

Upon an amalgamation effected under Section 161 of the Act, it is no objection that the objects of the purchasing company are more extensive than those of the selling company, *Southall v. British Mutual Life Assurance Society*, 11 Eq. 65 ; nor, indeed, that they are entirely different.

What companies can amalgamate under section 161.

Any company capable of being registered under the Act of 1862 (see Part VII. of the Act) may effect a reconstruction or amalgamation under Section 161. It will register and immediately resolve on a voluntary winding up and sale. Section 180 of the Act provides that such a registration shall not be invalid by reason that it has taken place with a view to the company being wound up, and it has been decided that registration with a view to winding up and selling under Section 161 is not open to objection. *Southall v. British Mutual Life Assurance Society*, 11 Eq. 65.

As to name of amalgamated company.

If it be desired that the purchasing company should assume the name of the selling company, or part of it, the agreement will provide accordingly, and the change will be made, with the consent of the Board of Trade and of the liquidators, under

Sections 13 and 20 respectively of the Act. This has been done in various cases, and may be effected in a few days.

An amalgamation with a foreign company may be effected under Section 161. See *supra*, p. 482.

Amalgamation with foreign company.

An agreement for sale adopted by the liquidators pursuant to a *direction* of the company is valid. See *supra*, p. 482.

The agreement may provide for the allotment of the shares to the liquidators, or to the members directly. See *supra*, p. 482.

As to dissentients, see *supra*, p. 483 *et seq.*

Dissentients.

As to their right of action for purchase-money, see *supra*, *Ibid.*

As to arbitration, see *supra*, p. 483.

As to the rights of dissentients being restricted by the articles, see *supra*, p. 487.

An agreement in a winding up to sell the assets in consideration of shares, coupled with a provision that if the realised value should not amount to a fixed sum, the deficiency should be made good by a call on the members of the selling company, is not such a sale as can be made under Section 161. Even if the call was to be made on the assenting members only, it is considered that such a sale would be invalid. "It is sufficient to say that, in my opinion, the liquidators of a company would have no right to place a shareholder of a company in this position, that he must either dissent altogether from the arrangement, and be subject to have his share taken from him at a valuation, or else come in under the arrangement, and thus be forced to subject himself to the liability of guaranteeing the sufficiency of the assets." *Per* Lord Cairns, L. C., *Clinch v. Financial Corporation*, 4 Ch. 120. The property to be sold under Section 161 is the assets of the company, exclusive of its uncalled capital (if any). *Ibid.*

Clinch v. Financial Corporation.
Invalid agreement.

Upon a sale under Section 161 the members of the selling company cannot be called on to pay a premium for the allotment to them of the shares in the purchasing company. *Imperial Bank of China, &c., v. Bank of Hindustan, China, and Japan*, 6 Eq. 91; 1 Ch. 339. But a sale may be made in consideration of shares which are to be deemed only in part paid up. *Imperial Mercantile Credit Association*, 12 Eq. 504; *Hester & Co.*, 44 L. J. Ch. 757; or it would seem in consideration of deferred or preference shares.

Premium for shares.

As to altering articles of association with a view to deprive dissentients of their rights under Section 161, see *supra*, p. 487.

As to novation of contract, see Lindley, 450, and Buckley, 310.

As to validity of sale to a trustee for the new company, see *supra*, p. 482.

As to necessity and mode of securing payment of dissentients, see *supra*, p. 484.

Amalgama
tion of life
assurance
companies.

As to the amalgamation or transfer of the business of life assurance companies, see the Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), ss. 14, 15; Buckley, 607. Under the Act last mentioned, the sanction of the Court must be obtained to any transfer or amalgamation. See further *infra*, "Petitions," Precedent II.

AMALGAMATION.

SCHEME I.

In the following case company A. and company B. C. are desirous of amalgamating : the directors of the latter have full power to acquire the assets of the former, and there is a sufficient number of unissued shares in the B. company for the purposes of the agreement.

Forms.

The agreement will be as follows :—

AN AGREEMENT made the — day of —, between Parties.
A., of—, on behalf of the A. Company, Limited, (hereinafter called the A. Company) of the one part, and the B.C. Company, Limited (hereinafter called the B. Company) of the other part.
WHEREAS (*recite incorporation of A. Company: capital 40,000l., in 20l. shares, with 10l. paid up; all the shares issued and fully paid up*) : AND WHEREAS the B. Company was incorporated in the year— under the Companies Acts, 1862 and 1867: AND WHEREAS the nominal capital of the B. Company is 60,000l., divided into 6,000 shares of 10l. each, whereof 3,000 and no more have been issued and now stand credited in the books of the B. Company as having been fully paid up: AND WHEREAS it is intended to procure the A. Company to pass special resolutions for a voluntary winding up, appointing liquidators, and directing them to adopt and carry into effect this agreement :
Recitals.

NOW IT IS HEREBY AGREED as follows :—

1. This agreement is conditional. [*Supra*, p. 494.] Condition.
2. The A. Company shall sell and the B. Company shall purchase all and singular. [*Supra*, p. 494.] Agreement to sell.
3. As a part. [*Supra*, p. 494.] Debts of A. Company to be paid.
4. As a further part. [*Supra*, p. 490.] Costs of winding up.
5. As a further part of the consideration for the said sale the B. Company shall, within three months from the adoption hereof by the liquidators of the old company with such sanction as aforesaid pay to — the sum of —l., to — the sum of —l., and to — and — the sums of —l. apiece, such sums to be accepted by the said persons in full Compensation to officers of A. Company.

Forms.

discharge of all claims by them respectively upon the A. Company for loss of office occasioned by the winding up thereof.

The above clause provides for payments to some of the officers of the A. company. See *supra*, p. 535, as to the validity of such a stipulation.

Allotment of
shares to
members of
A. Company.

6. As the residue of the consideration for the said sale, the B. Company shall allot to or to the nominee or nominees of every member of the A. Company who shall require the B. Company so to do, one of its 10% shares on which the sum of 10% shall be credited as having been paid up, in respect of every 20% share in the A. Company held by him.

7—11. [*Ut supra*, p. 494 *et seq.*, clauses 6 to 10 inclusive.]

Power to
rescind.

12. If this agreement shall not before the — day of — next be adopted by the liquidators of the A. Company, with the sanction of a special resolution of that company, either of the parties hereto may, upon giving one week's notice in writing to the other, rescind the same.

When A. to be
discharged
from liability.

13. When and so soon as this agreement [*Supra*, p. 495].

14. Notwithstanding anything herein contained. [*Supra*, p. 491.]

15. These presents are intended to operate as an agreement only and not as a conveyance, transfer, or assignment [See *supra*, p. 492].

16. If any [*Supra*, p. 492].

As WITNESS the hands of the said A., and of R. D., one of the directors of the B. Company, on its behalf, the day and year first above written.

In incorporating the clauses above referred to, they must be modified by substituting "A." and "B." for the words "old" and "new" where necessary.

The resolutions to be passed by the A. Company may be as follows:—

1. That it is expedient to effect an amalgamation of this company with the B. C. Company, Limited.

2. That the company be wound up voluntarily, and that — and — be and they are hereby appointed liquidators for the purpose of such winding up.

3. That the conditional agreement submitted to this meeting be and the same is hereby approved, and that the liquidators be and they are hereby authorised to adopt the said agreement and carry the same into effect.

SCHEME II.

Forms.

The following is another mode in which such an amalgamation as that above (p. 541) contemplated may be carried into effect. See further, *supra*, p. 530, *et seq.*

AN AGREEMENT made the — day of —, between Parties. — and —, the liquidators of the A. Company, Limited (hereinafter called the A. Company) of the first part, the A. Company of the second part, and the B. C. Company, Limited, (hereinafter called the B. Company) of the third part.

WHEREAS, &c. }
AND WHEREAS, &c. } *same as first two recitals, supra*, p. 541. Recitals.

AND WHEREAS by special resolution of the A. Company, passed and confirmed at general meetings thereof, held respectively on the — day of — and — day of —, it was resolved that the old company be wound up voluntarily, and that the said — and — be and they were thereby appointed liquidators for the purposes of such winding up, and it was resolved that the draft agreement in the said resolution mentioned, being the draft of these presents, be and the same was thereby approved, and that the said liquidators be and they were thereby authorised to enter into an agreement with the B. C. Company in the terms of the said draft, and to carry the same into effect : NOW IT IS HEREBY AGREED as follows :—

1. The A. Company and its liquidators shall sell, and the B. C. Company shall purchase. [*Supra*, p. 489, *mutatis mutandis*, but omitting the saving clause *ad fin.*] Agreement for sale.

2. As a part. } [*Supra*, p. 490, Clauses 2 and 3,
3. As a further part. } *mutatis mutandis.*]

4. As a further part. [*Supra*, p. 541, Clause 5, *mutatis mutandis.*]

5. As the residue } [*Supra*, p. 543, *mutatis mutandis.*]
6. If the liquidators }

7. The B. C. Company shall accept [*supra*, p. 491, *mutatis mutandis.*]

8. The A. Company } [*Supra*, p. 491, Clauses 7 and 8,
9. Provided always } *mutatis mutandis.*]

10. These presents. [*Supra*, p. 492.]

11. If any. [*Supra*, p. 492, *mutatis mutandis.*]

IN WITNESS whereof the said — and — have hereunto set their hands, and the respective common seals of the said

Forms. companies, parties hereto, have been hereunto affixed the day and year first above written.

SCHEME III.

In the following case three companies, A., B., and C., desire to amalgamate. The transaction is to be effected by the winding-up of A. and B., and sale to C., which is to carry on the amalgamated business. Company C. has issued all its shares, and the capital must therefore be increased in order to effect the amalgamation. One of the terms of the arrangement is that two of the directors of each of the A. and B. companies shall be appointed directors of the C. company. In such a case one mode of effecting the transaction is as follows :—

Two draft agreements between the A. and B. companies, respectively, and the C. company will be prepared. They will be in the form of that given, *supra*, p. 541, *mutatis mutandis*.

These drafts will be submitted to the C. company, which will pass the following special resolutions :—

RESOLUTIONS OF C. COMPANY.

1. That it is expedient to effect an amalgamation of this company with the A. Company, Limited, and with the B. Company, Limited.

2. That the following draft agreements, submitted to this meeting, namely :—

(a.) A draft agreement, dated, &c., and expressed to be made between N., on behalf of the A. Company, Limited, of the one part, and this company of the other part :

(b.) A draft agreement, dated, &c., and expressed to be made between R., on behalf of the B. Company, Limited, of the one part, and this Company of the other part :

be and they are hereby approved, and that the directors be and they are hereby authorised to execute agreements in the terms of the said drafts respectively, and to carry the same into effect.

3. That the capital of this company be increased to —l. by the creation of — new shares of —l. each.

4. That the directors be and they are hereby authorised, upon the adoption of the said first mentioned agreement by the liquidators of the A. Company, Limited, with the sanction of a special resolution of that company, to appoint — and —, two of the present directors of the said company, to be directors of this company.

5. That. [*Similar resolution as to B. Company.*]

Forms.

6. That the following clause be substituted for Clause — of the articles of association of this company, namely: "The number of directors of the company shall not exceed 12, and shall not be less than 7."

The A. and B. Companies will then pass special resolutions as above, p. 542, and the liquidators will in due course adopt the agreements, which will be carried into effect.

The clause in the agreements as to the appointment of the directors will be as follows:—

"Upon the adoption of this agreement by the liquidators of the [A.] Company with the sanction of a special resolution of that company, — and —, two of the present directors thereof, shall be appointed directors of the C. Company."

This clause can of course be modified so as to enable the A. Company in general meeting to select the two directors, or to enable the directors of that company to do so.

SCHEME IV.

In this case Company A. and Company B. desire to amalgamate, and for divers reasons it is necessary to effect this by the formation of a new company to absorb the old ones, *supra*, p. 532.

An agreement, expressed to be made between the A. and B. Companies and the liquidators thereof respectively, and the new company will be prepared. See form of agreement, *infra*, p. 550, or there may be two separate agreements each similar to that *supra*, p. 543.

Each of the A. and B. Companies will then pass a special resolution as follows:—

That. [*Amalgamation expedient, supra*, p. 542.]

1. That, &c. [*Wind up and appointment of liquidators.*]

2. That the said liquidators be and they are hereby authorised to consent to this registration of a new company to be named "The A. and B. Company, Limited," with a memorandum and articles of association, which have been already prepared with the privity and approval of the directors of this company.

3. That the draft agreement expressed to be made between the liquidators of this company of the first part, this company of the second part, the liquidators of the B. Company, Limited, of the third part, the B. Company, Limited, of the fourth part, and the A. and B. Company, Limited, of the fifth part, be and the same is hereby approved, and that the said liquidators be and they are hereby directed to enter into an agreement on behalf of this company in the terms of the said draft, and to carry the same into effect.

Forms.

Immediately after the passing of the resolutions the liquidators will sign the proper consent authorising the registration of the A. and B. Company, which will be forthwith incorporated. For Form of Consent, see *supra*, p. 315.

The primary object of the A. and B. Company, as set forth in the memorandum, will be :—

“To purchase or otherwise acquire and to undertake all or any part of the business, property, assets, and liabilities of the following companies, namely :

The A. Company, Limited,

The B. Company, Limited,

or either of them, upon such terms and conditions, and subject to such stipulations as may be agreed on.”

The memorandum will also contain all requisite objects for carrying on the amalgamated business.

The articles will authorise the directors to execute the agreement, *supra*, p. 251.

As soon as may be after the registration of the new company, the agreement will be executed by all parties and carried into effect.

SCHEME V.

The following is a case in which two existing companies wish to amalgamate. The transaction is to be effected by the winding up of the one and the sale of its assets to the other. The selling company is to pay its own debts, costs of winding up, and to satisfy dissentients. The purchasing company has to sanction the agreement by special resolution, since it involves the appointment of two of the board of the selling company to be directors of the purchasing company.

Parties.

AN AGREEMENT made the — day of —, 1876, between A. B., of —, on behalf of the C. Company, Limited, of the one part, and D. E., of —, on behalf of the F. Company, Limited, of the other part.

Recitals.

WHEREAS the said C. Company, Limited (hereinafter called the C. Company), was incorporated in the year —, under the Companies Acts, 1862 and 1867, with a nominal capital of 100,000*l.*, divided into 10,000 shares of 10*l.* each : And whereas the whole of the said 10,000 shares are now held by the members of the said C. Company and stand credited in the books thereof with the sum of 8*l.* credited as paid up thereon respectively : AND WHEREAS the F. Company, Limited (hereinafter called the F. Company), was incorporated in the year —, under the Companies Acts, 1862 and 1867, with a nominal capital of 200,000*l.*, divided into 40,000 shares of 20*l.* each, and the whole of the said shares have been issued and are now held by the members of the F. Company : And whereas it is desirable to effect an amalgamation of the said companies : NOW IT IS HEREBY AGREED as follows :

1. This agreement is conditional on (a) the ratification hereof before the — day of — next by special resolution of the F. Company; and (b) the adoption hereof before the — day of — next by the liquidators of the C. Company, with the sanction of a special resolution of that company.

Forms.
Condition.

2. Subject as aforesaid the C. Company shall sell and the F. Company shall purchase all and singular the goods, chattels, monies, credits, debts, bills, notes, and things in action, of the company, and the undertaking, business, and goodwill thereof, with the full benefit of all contracts and agreements, and of all securities in respect of the said things in action, to which the C. Company is entitled, and all other the real and personal property of that company whatsoever and wheresoever, freed and discharged from the several mortgages, charges, liens, and incumbrances affecting the same or any part thereof, saving nevertheless to the C. Company its uncalled capital.

Agreement for sale.

3. As the consideration for the said sale the F. Company shall duly create and allot to the liquidators of the C. Company 10,000 preference shares in the F. Company of 8*l.* each, the holders of which preference shares shall be entitled to be paid out of the profits of the F. Company in each year a preferential dividend at the rate of 6 per cent. for that year on the nominal amount of the said shares held by them respectively. Each of the said preference shares shall be deemed for all purposes to be fully paid up.

Allotment of preference shares.

4. Immediately after the allotment of the said 10,000 shares shall have been made, the F. Company shall convert the same into stock to be called preference stock, and the liquidators shall distribute the same, or so much thereof as shall not be sold for the purpose of satisfying the creditors of the C. Company and carrying the winding up into effect, among the members of the C. Company in proportion to their respective interests in that company.

Shares to be converted into stock.

5. Upon the adoption of this agreement by the said liquidators in manner aforesaid — and —, two of the present directors of the company, shall be appointed directors of the F. Company in addition to the then directors thereof.

Appointment of directors.

6. The C. Company shall pay all mortgages, charges, liens, and incumbrances whatsoever affecting the property hereby agreed to be sold, or any part thereof, and shall indemnify

C. Company to pay incumbrances affecting property.

Forms.

Company may
change its
name.

the F. Company from and against all actions, proceedings, costs, damages, claims, and demands whatsoever in respect thereof.

7. At any time after the adoption of this agreement by the liquidators of the C. Company in manner aforesaid it shall be lawful for the F. Company to alter its name to "The C. and F. Company, Limited," and the said liquidators shall, at the request of the F. Company, sign a proper notification to the registrar of joint stock companies expressing their consent on behalf of the C. Company to the registration of the F. Company by such new name.

8. The F. Company shall accept. [*Supra*, p. 491, *mutatis mutandis*.]

9. The sale agreed to be hereby made. [*Supra*, p. 494, *mutatis mutandis*.]

10. The C. Company and its liquidators shall, as soon as conveniently may be after the adoption of this agreement by the liquidators in manner aforesaid, execute and do. [*Supra*, p. 491, *mutatis mutandis*.]

11. These presents. [*Supra*, p. 492.]

In what event
agreement to
be void.

12. If this agreement shall not, before the — day of — next, have been ratified and adopted in manner specified in Clause 1 hereof, these presents shall thereupon become void.

AS WITNESS the hands of the said parties hereto, the day and year first above written.

The F. company will, as soon as may be after the execution of the above agreement, be called on to sanction the same by passing the following resolutions :—

1. That the conditional agreement now read to this meeting, which agreement is dated the — day of —, and made between A. B., on behalf of the C. Company, Limited, of the one part, and D. E., on behalf of this company, of the other part, be and the same is hereby ratified, and that the directors of this company be and they are hereby authorised to carry the same agreement into effect.

2. That the capital of this company be increased to 280,000£ by the creation of 10,000 shares of 8£ each, which shares shall be called preference shares, and that the holders of the said shares shall be entitled to be paid out of the profits of the company [*supra*, p. 547].

3. That upon the adoption of the said agreement by the liquidators of the C. Company, Limited, with the sanction of a special resolution of that company :

Forms.

- (a.) The directors shall be and they are hereby authorised to allot and issue the said 10,000 preference shares, in accordance with the terms of the said agreement, and immediately after the allotment thereof, to convert the same into a stock to be called preference stock.
- (b.) — and —, two of the present directors of the C. Company, Limited, shall, in accordance with Clause — of the said agreement, become directors of this company in addition to the then directors thereof.
- (c.) Clause — of the articles of association of this company shall be altered by the insertion of the word seven therein instead of the word five.

And the C. Company will then be called on to pass the following special resolutions :—

1. That it is expedient that this company should be amalgamated with the F. Company, Limited.

2. That this company be wound up voluntarily, and that — and — be and they are hereby appointed the liquidators of this company for the purposes of such winding up.

3. That the said liquidators be and they are hereby authorised and directed to adopt on behalf of this company and carry into effect the agreement now read to this meeting, which agreement is dated, &c., and made, &c.

4. That the said liquidators be and they are hereby authorised and directed to sell so much of the preference stock in the F. Company, Limited, which under clause — of the said agreement they will become entitled to, as shall be sufficient to raise the amount requisite to pay and satisfy all the debts and liabilities of this company, and the costs, charges, and expenses of or incidental to the winding up of the same, and the purchase-money which may be payable to any member or members of this company who shall become entitled to have his or their interest or interests purchased by the said liquidators.

5. That the said liquidators be and they are hereby authorised and directed to apply the proceeds of such sale in

Forms.

payment and satisfaction of the said debts, liabilities, costs, charges, expenses, and purchase-money (if any), and to distribute the residue of the said preference stock, and also any surplus proceeds of the said sale, among the members of this company (other than those whose interests shall have been purchased by the said liquidators) rateably in proportion to their respective interests in the capital of this company.

See *supra*, p. 484, as to selling company paying its own debts, &c.

SCHEME VI.

The following agreement was used in a recent amalgamation of three important companies, the aggregate amount of whose paid-up capitals was nearly two millions. The number of members was very large, and the debenture debts amounted to several hundred thousand pounds. The arrangement was successfully carried out.

Parties.

ARTICLES OF AGREEMENT made the — day of —, between A., of —, B., of —, and C., of —, who are the directors of the X. D. Company, Limited, and who are also the liquidators of that company, and are hereinafter referred to as the liquidators of the X. Company, of the first part, the X. D. Company, Limited, hereinafter referred to as the X. Company, of the second part, D., of —, E., of —, and F., of —, who are the directors of the Q. P. Company, Limited and Reduced, and are also the liquidators of that company, and are hereinafter referred to as the liquidators of the Q. Company, of the third part, the Q. P. Company, Limited, hereinafter called the Q. Company, of the fourth part, G., of —, H., of —, and I., of —, who are the directors of the Z. S. Company, Limited, and are also the liquidators of that company, and are hereinafter referred to as the liquidators of the Z. Company, of the fifth part, the Z. S. Company, Limited, hereinafter referred to as the Z. Company, of the sixth part, and the L. P. G. Company, Limited, hereinafter referred to as the L. Company, of the seventh part.

Recitals.

WHEREAS by special resolutions of each of the three companies parties hereto of the second, fourth, and sixth parts respectively, duly passed on the — day of the present month of —, and confirmed on the — day of the same month, it was resolved that the same company be forthwith wound up voluntarily,

Forms.

and the said directors thereof were appointed liquidators thereof and were authorised to make such arrangements as they should think fit for transferring the whole of the business and property of the same company to the L. Company, in consideration of shares in that company to be distributed among the members of the said company in liquidation in the proportion therein mentioned as to each of the said three companies in liquidation, on condition that the L. Company should also acquire the business and property of the others of the said three companies in liquidation or one of them: Now IT IS HEREBY AGREED by and between the liquidators of the X. Company, and that company, and the L. Company, that the liquidators of the X. Company shall sell to the L. Company, which shall purchase, all the business, undertaking, real and personal property, credits, assets, and effects of the X. Company, in consideration of 50,000 shares of 10% each in the capital of the L. Company, on each of which shares the full sum of 10% shall be credited as having been paid up, to be allotted by that company to the said liquidators of the X. Company for distribution among the members of that company, and to be issued to the said liquidators or their nominees, and also in consideration of the agreements on the part of the L. Company hereinafter contained: AND IT IS HEREBY AGREED by and between the liquidators of the Q. Company, and that company and the L. Company, that the liquidators of the Q. Company, &c. [*Same, mutatis mutandis, as above agreement.*] AND IT IS HEREBY AGREED and declared by and between the liquidators of the Z. Company, and that company, and the L. Company, that the liquidators of the Z. Company, &c. [*Same, mutatis mutandis, as above agreement with the X. Company.*] AND THE L. COMPANY HEREBY AGREES with the X. Company, the Q. Company, and the Z. Company, and the liquidators of each of the three last-mentioned companies respectively, that the L. Company will duly allot and issue the several shares hereinbefore mentioned as fully paid-up shares in manner aforesaid: And also will pay to any officer or officers of each or any of the said three companies in liquidation such compensation, in consideration of the discontinuance of his or their employment, as the liquidators of that company respectively shall direct, not exceeding in the aggregate the sum of — :

X. Company to
sell its assets
to L. Com-
pany.

Q. Company
to sell its
assets to L.
Company.

Z. Company to
sell its assets
to L. Com-
pany.

Shares in L.
Company to
be allotted.

Compensation
to officers.

Forms.	
L. Company to pay debts of selling single companies ;	And further, that the L. Company will pay, discharge, observe, perform, and keep, all the debts, liabilities, contracts, and engagements, of each of the three last-mentioned companies, which appear by the books of account or minutes of proceedings of that company, and are now due, owing, or in force, including liabilities in respect of dividends or guaranteed interest on shares : And also all the costs, charges, and expenses which have been or may be incurred by the liquidators in or about the winding up of the said company: and also that in case the liquidators of the said respective companies shall, in order to carry the said sale into effect, have occasion to purchase the interest or interests held by any dissentient member or members of the same company, according to the provisions of the Companies Acts, 1862, Section 161, the L. Company will pay to the said liquidators the excess (if any) of the purchase-money for the said interest or interests of the dissenting member or members, over and above the proceeds of the sale of the paid-up share or shares which the same member or members would, if not dissenting, have been entitled to under the said winding up : And the L. Company further agrees with the X. Company, the Q. Company, and the Z. Company respectively, and the liquidators of the three last-mentioned companies respectively, that the L. Company will bear and pay all the costs, charges, and expenses of and incidental to the transfers and assignments to be executed by the said companies and liquidators, to the L. Company, in pursuance of this agreement, and otherwise in or about the preparation, execution, and carrying into effect of this agreement.
and costs of winding up ;	
and provide funds for dissentients.	
L. Company to pay costs of assignments, &c.	In WITNESS whereof the said parties hereto of the first, third, and fifth parts have hereunto set their hands and seals, and the respective common seals of the companies, parties hereto, of the second, fourth, and seventh parts, have been hereunto respectively affixed the day and year above written.

SCHEME VII.

The following will show the mode in which an amalgamation may be effected by Act of Parliament. It is, however, but rarely that companies formed under the Act of 1862 seek the aid of Parliament in order to effect amalgamation. In order to understand the effect of the Act, Part V. of the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), must be perused and considered. See *supra*, p. 527, for two sections of this Act.

An Act for amalgamating the E. B. Gas and Water Company, and the P. B. Gas and Coke Company (Limited), and the B. Consumers Gas Company (Limited); and for other purposes. Forms.

WHEREAS in the year 1866 "The E. B. Gas and Water Act, 1866," was passed :

And whereas by "The E. B. Gas and Water Act, 1866," the E. B. Gas and Water Company were incorporated and were empowered to supply gas and water in the parishes of E. B., C. B., and T. in the county of H., and F. B., and H——, in the county of N., or some of them :

And whereas on the 31st day of July, 18—, the P. B. Gas and Coke Company, Limited, were incorporated by memorandum of association under "The Companies Act, 1862," the objects for which they were established being (among others) the making and sale of gas and the supplying with gas the inhabitants of P. B. in the parish of S. M. in the county of N., and the adjacent places :

And whereas on the 31st day of October, 1871, the B. Consumers Gas Company, Limited, were incorporated by memorandum of association under "The Companies Act, 1862," the objects for which they were established being (among others) the manufacture, supply, and sale of gas, and the carrying on of the business of a gaslight and coke company in the neighbourhood of C. B., B., and S., in the county of H., and M. H., S. M., and E., in the county of N., and other places in those counties :

And whereas the state of the share and loan capital of the said three companies appears in the first schedule to this Act :

And whereas the amalgamation of the undertakings of the said three companies would be of great public and local advantage, and the same has been agreed on by the said two limited companies by special resolutions passed in accordance with the provisions of "The Companies Act, 1862," and it is expedient that effectual provision be made for the same :

And whereas it is expedient that various provisions be made respecting the undertaking which will be constituted by the amalgamation of the undertakings of the said three companies :

And whereas the objects aforesaid cannot be attained without the authority of Parliament :

Forms.	May it therefore please Your Majesty that it may be enacted ; and be it enacted, &c., as follows ; (that is to say.)
Short title.	1. This Act may be cited as "The B. District Gas and Water Act, 187—."
Provisions of general enactments herein named incorporated.	2. The following enactments (as far as they are applicable for purposes of and are not varied by or inconsistent with this Act) are hereby incorporated with this Act ; (namely,) "The Companies Clauses Consolidation Act, 1845," except the provisions thereof with respect to the conversion of borrowed money into capital, "The Companies Clauses Act, 1863," "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869" (except as far as the same relate to the purchase or taking of or entry on lands otherwise than by agreement), "The Gasworks Clauses Act 1847," "The Waterworks Clauses Acts, 1847 and 1863," and Part V. (relating to amalgamation), except sections 39 and 52, of "The Railways Clauses Act, 1863 ;" and "The Gasworks Clauses Act, 1871," shall apply to the existing gas undertakings of the three companies as if the same were hereby authorised.
Interpretation of terms.	3. In this Act "the E. B. Company" means the E. B. Gas and Water Company, "the P. B. Company" means the P. B. Gas and Coke Company, Limited, "the B. Company" means the B. Consumers Gas Company, Limited, "the three Companies" means the said three companies, "the amalgamation" means the amalgamation of the three companies effected by this Act, and "the company" means the B. District Gas and Water Company incorporated by this Act ; and in this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith shall have the same respective meanings, unless there be something in the subject or context repugnant to such construction ; and in construing with this Act the Acts wholly or partially incorporated herewith the expression "the special Act" shall mean this Act, and the expression "fiat in bankruptcy" shall mean and include any proceedings in bankruptcy; and in this Act and the Acts wholly or partially incorporated herewith the expressions "the company" and "the undertakers" shall respectively mean the company by this Act incorporated, the expressions "the gasworks" and "the waterworks" shall mean respectively the gasworks and waterworks of the company, or which they may hereafter become possessed

of under the powers of this Act, the expression "the undertaking" shall mean and include such gasworks and waterworks, the expression "superior courts" or "court of competent jurisdiction," or any other like expression, shall be read and have effect as if the debt or demand with respect to which the expression is used were, a common simple contract debt, and not a debt or demand created by statute.

4. The limits of this Act for the supply of gas shall be and include the whole of the several parishes of, &c.

5. The limits of this Act for the supply of water shall be and include the several parishes and places of, &c.

6. The schedules to this Act shall be deemed part of this Act.

7. The three companies are hereby as from and immediately after the 30th day of September, 18—, dissolved, and "The E. B. Gas and Water Act, 1866," is hereby as from and immediately after the same day repealed, and the respective memorandums and articles of association of the P. B. and B. Companies are hereby as from and immediately after the same day annulled, and the time of the dissolution aforesaid shall, for the purposes of this Act, and of the enactments incorporated with this Act, be deemed the time of amalgamation.

8. The persons and corporations who are at the time of amalgamation shareholders in and members of the three companies respectively, and all persons and corporations from time to time subscribing to the undertaking authorised by this Act, and their respective executors, administrators, successors, and assigns, are hereby as at and from the time of amalgamation incorporated into a company by the name of The B. District Gas and Water Company, and by that name shall be a body corporate, with perpetual succession and a common seal, and with power to purchase, take, hold, and (by grant, demise, or otherwise) dispose of lands and other property for purposes of their undertaking.

9. Part V. of "The Railways Clauses Act, 1863," shall, for the purposes of this Act, operate as if the three companies were railway companies within that part, and as if the respective memorandums and articles of association of the P. B. and B. Companies were special Acts within that part.

10. All money due at the time of amalgamation to or from the three companies respectively on revenue account shall be

Forms.

Limits of Act for supply of gas.

Limits of Act for supply of water.

Effect of schedules.

Dissolution of the three companies.

Incorporation of B. District Gas and Water Company.

Application of Part V. of 26 & 27 Vict. c. 92, to this Act.

Debts and credits on

Forms. revenue account.	deemed to be assets or debts of the company, and the company shall adopt the revenue accounts of the three companies made up to the time of amalgamation, and audited by the respective persons whose duty it would have been, if this Act had not been passed, to audit the accounts of the three companies, or in default of those persons, or any of them, by such respective persons as the company for that purpose appoint, and the balance remaining on those accounts shall be carried to the revenue account of the company.
Expenses of amalgama- tion.	11. The company shall pay all the expenses of and incident to the closing of the accounts of the three companies respectively, and of and incident to their amalgamation.
Indemnity to trustees, &c.	12. Every trustee or other person in whom or in whose name any property of the P. B. Company or of the B. Company was vested or standing, and who before the time of amalgamation has lawfully entered into any bond, covenant, contract, or other engagement in relation thereto, and every person who being duly authorised in that behalf has before the time of amalgamation entered into any other contract on behalf of either of those companies, shall be indemnified out of the property of the company from all liability and against all expenses in consequence of his having entered into the same.
Capital arrangements in schedule.	13. The arrangements relative to the respective share capitals of the three companies, and relative to the stock and share capital of the company, set forth in the second schedule to this Act shall be binding on the three companies and on the company, and shall be carried into effect accordingly.
Continuance of trusts of stock, &c.	14. Stock in the capital of the company, appropriated in pursuance of the stock and share capital arrangements confirmed by this Act, shall vest in the person or corporation entitled thereto on the same trusts and subject to the same powers, provisions, declarations, agreements, and charges as at the time of amalgamation affect those shares in the capital of one of the three companies for which the stock is substituted, and so as to give effect to and not revoke any testamentary disposition.
Company to issue certi- ficates and may require old certificates to be exchanged.	15. The company shall from time to time on request issue to proprietors of shares in the three companies respectively certificates of stock in the company in lieu of and exchange for the certificates of shares in the three companies respectively, and the company, if and when they think fit, may require the

several proprietors of shares in the three companies to exchange the certificates thereof for certificates of stock in the company.

Forms.

16—23. [*Power to divide shares into preferred and deferred. See infra, p. 581.*]

24. [*Receipts on behalf of minors, &c.*]

25. [*As to proxies of corporations.*]

26. [*Shares not to be issued until one-fifth paid.*]

27. [*Power to borrow.*]

28. [*Power for mortgagees to enforce payment by the appointment of a receiver.*]

29. [*Power to create debenture stock.*]

30. [*Interest on mortgages and debenture stock to rank equally.*]

31. [*As to priority of mortgages, &c.*]

32. [*Monies raised to be applied for purposes of Act only.*]

33. [*As to accounts of company.*]

34. [*When first ordinary meeting to be held.*]

35. [*Number of directors.*]

36. [*Qualification of directors.*]

37. [*Quorum.*]

38. [*First directors and election of future directors.*]

39. [*Certain contracts not to disqualify directors.*]

40. The company may purchase or acquire by agreement the lands distinguished by (B.) in the third schedule to this Act, and may hold any part thereof, purchased by the E. B. Company before the passing of this Act, and may also purchase and acquire from any person willing to sell or grant the same any further lands not exceeding in quantity fifteen acres, or the company may take by agreement any easements, rights, or privileges in, over, or affecting any of such lands respectively for the purposes of their undertaking, and the persons empowered by "The Lands Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," respectively, to sell and convey or release lands shall have full power to grant to the company any such easement, right, or privilege, and if they shall so think fit in consideration of an annual rentcharge: Provided always, that the company shall not, under the powers of this Act, erect any works for the manufacture of gas or residual products upon any lands other than those specified in the third schedule to this Act.

Power to
purchase lands
by agreement.

41. The company from time to time may maintain, alter,

owers as to

Forms.
 maintenance
 of gasworks,
 &c.

and improve the existing gasworks situate upon the lands specified in the third schedule to this Act, and may upon those lands erect and maintain works for the manufacture and storage of gas, and may do all such acts as they think proper for supplying gas within the limits of this Act, and may make, store, and supply gas accordingly, and may manufacture, sell, provide, supply, and deal in coke, coal, tar, pitch, asphaltum, ammoniacal liquor, any salts of ammonia, oil, and other products and residuum of any materials employed in or resulting from the manufacture of gas, and also meters, fittings, tubes, pipes, and other articles and things in any way connected with gasworks or with the supply of gas, as they from time to time shall think fit.

- 42—46. [*As to price of gas, &c.*]
- 47. [*Pressure of gas.*]
- 48. [*Quality of gas.*]
- 49. [*Testing place and apparatus.*]
- 50. [*Power to hold licenses.*]
- 51. [*Service pipes.*]
- 52. [*Power to lay pipes against buildings.*]
- 53. [*Sums undisputed to be recoverable by distress.*]
- 54. [*Power to purchase works of another company.*]
- 55. [*Water need not constantly be laid on under pressure.*]
- 56—57. [*Rates for supply of water.*]
- 58. [*Provision to prevent fouling of water.*]
- 59. [*Power to supply water on special agreement.*]
- 60. [*Notice to company to discontinue supply of water to be in writing.*]
- 61. [*As to ball cocks, &c., for cisterns.*]
- 62. [*Regulations to prevent waste of water.*]
- 63. [*Power of entry on premises to cut off supply of water.*]
- 64. [*Mode of giving notice previously to such entry.*]
- 65. [*As to recovery of rates.*]
- 66. [*Several names may be included in one warrant.*]
- 67. [*Warrant may include costs.*]
- 68. [*Recovery of rents, &c., by action.*]
- 69. [*As to penalties.*]
- 70. [*Liability to rate not to disqualify justices.*]
- 71. [*Expenses of Act.*]

THE SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

Forms.

SHARE AND LOAN CAPITAL OF THE THREE COMPANIES.

I. *E. B. Company.*

SHARE CAPITAL.	Authorised.	Issued.	Amount paid up.
5,000 shares of 10 <i>l.</i> each	50,000 <i>l.</i>	50,000 <i>l.</i>	49,220 <i>l.</i>
Further	50,000 <i>l.</i>	None.	

LOAN CAPITAL.	Authorised.	Raised.
In respect of first 50,000 <i>l.</i>	12,500 <i>l.</i>	11,810 <i>l.</i>
In respect of second 50,000 <i>l.</i>	12,500 <i>l.</i>	None.

II. *P. B. Company.*

SHARE CAPITAL.	Authorised.	Issued.	Amount paid up.
1,000 shares of 5 <i>l.</i>	5,000 <i>l.</i>	5,000 <i>l.</i>	5,000 <i>l.</i>

LOAN CAPITAL.
Nil.

III. *B. Company.*

SHARE CAPITAL.	Authorised.	Issued.	Amount paid up.
3,000 shares of 10 <i>l.</i>	30,000 <i>l.</i>	15,150 <i>l.</i>	12,280 <i>l.</i>

£66,500

LOAN CAPITAL.
Nil.

THE SECOND SCHEDULE.

STOCK AND SHARE CAPITAL ARRANGEMENTS.

1. The original stock and share capital of the company shall be 85,000*l.* (being the aggregate amount of the authorised immediate share capitals of the three companies).

2. Between the passing of this Act and the time of amalgamation none of the three companies shall increase the amount of their share capital, or call for or receive from any shareholder any money in payment up of capital, or otherwise on capital

Forms. account, nor shall any shareholder be entitled to make any such payment, whether on account of arrears of past calls or otherwise.

3. The original stock and share capital shall consist of stock to the amount of 66,500*l.*, to be deemed fully paid up, and of 1850 shares of 10*l.* each.

4. The stock shall be distributed among the shareholders of the three companies, being such at the time of amalgamation, in proportion to their respective holdings in, and the sums at the passing of this Act paid up towards the several capitals of the three companies ; (that is to say,)

49,220 <i>l.</i> E. B. Company	} to be distinguished	
5,000 <i>l.</i> P. B. Company		as A. capital.
12,280 <i>l.</i> B. Company		as B. capital.
66,500 <i>l.</i>		

5. Every shareholder in the three companies, being such at the time of amalgamation, shall be registered in conformity with these arrangements, according to his holding.

6. The several holders of capital stock of the company shall be entitled to participate in the dividends and profits of the company, and to the same privileges and advantages for the purpose of voting at meetings of the company, qualification for the office of director, and for other purposes, as if the stock had been formed by the conversion or consolidation into stock of fully paid-up shares of the capital of the company.

7. The 1850 shares of the original stock and share capital shall be issued from time to time as if the same were additional share capital in accordance with the provisions of sections 16 to 21 (inclusive) of "The Companies Clauses Act, 1863."

8. The 1850 shares shall be issued as, and shall form part of, the A. capital.

9. The B. capital shall take a dividend of one per centum per annum less than the A. capital, unless and until a dividend of ten per centum per annum is being paid on the A. capital, in which case the further divisible profits (if any) shall go to make up the dividend on the B. capital at the rate of ten per centum per annum.

10. When the whole of the original stock and share capital of the company has been expended for the purposes of this

Act, and if such capital is found insufficient for such purposes, the company, with the consent of three-fifths of the shareholders present in person or by proxy at any general meeting of the company, specially convened for the purpose, may from time to time raise by the creation and issue of new ordinary shares or stock in their undertaking any further sum or sums of money not exceeding in the whole 50,000*l*.

Forms.

11. Notwithstanding anything contained in The Gasworks Clauses Act, 1847, the company shall not in any year pay a larger dividend on such new ordinary shares or stock than at the rate of ten pounds in the hundred on the amount for the time being paid up in respect of such shares, or (as the case may be) upon the amount of such stock, but if in any year ending on the 31st day of December there are not profits available for the full payment of that dividend, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

THE THIRD SCHEDULE.

LANDS ON WHICH COMPANY MAY MANUFACTURE GAS.

(A.)

Certain lands situate, &c.

(B.)

A piece of land situate, &c.

PETITIONS.

PRECEDENT I.

PETITION to COURT to sanction REDUCTION of CAPITAL.

Prec. I.

In the High Court of Justice.

Chancery Division.

Vice-Chancellor ——. [*Or* Master of the Rolls.]

In the matter of the Companies Act, 1867.

And in the matter of the — Company
Limited and Reduced.

To Her Majesty's High Court of Justice :

The humble petition of the — Company, Limited
and Reduced :

Showeth as follows :

1. Your petitioner, the above-named company (hereinafter Incorporation.
called the company), was incorporated in the year —, under
the Companies Acts, 1862 and 1867, as a company limited by
shares.

2. The registered office of the company is situated at —. Office.

3. The objects for which the company was established are as Objects.
follows :

See *infra*, p. 610.

4. The capital of the company is 100,000*l.* divided into Capital.
5,000 shares of 20*l.* each.

5. Shortly after the incorporation of the company it com- Business.
menced and has since successfully carried on business.

6. The company has issued 4,200 of its shares, and no more, Shares issued.
and the sum of 10*l.* per share has been paid up thereon.

7. By Clause 37 of the articles of association of the Power to re-
duce capital.
company it is provided that the company may from time to
time by special resolution reduce its capital.

8. By a special resolution of the company duly passed and Special reso-
lution to re-
duce capital.
confirmed, in accordance with Section 51 of the Companies

Proc. I. Act, 1862, at extraordinary general meetings of the company held respectively on the — day of — and — day of —, it was resolved as follows, namely : “That the nominal capital of the company be reduced from 100,000*l.* divided into 5,000 shares of 20*l.* each to 50,000*l.* divided into 5,000 shares of 10*l.* each.”

Your petitioner the company therefore humbly prays :

- (1.) That the said special resolution passed and confirmed as aforesaid may be confirmed.
- (2.) That to this end all inquiries and directions necessary and proper may be made and given, and that a day may be fixed on and after which the company shall be at liberty to discontinue the addition to its name of the words “and reduced.”
- (3.) Or that such further or other order may be made as the nature of the case may require.

And your petitioner will ever pray, &c.

NOTE.—It is not intended to serve this petition upon any person.

See further, *supra*, p. 297, as to reduction of capital under the Act of 1867, and as to the necessity of applying to the Court to confirm the reduction. There are several operations which have been treated as reductions of capital, capable of being sanctioned by the Court.

1. Suppose the capital to be 10,000*l.* in 10*l.* shares, upon each of which 5*l.* has been paid up. The company desires to reduce the nominal amount of its capital to 5,000*l.*, divided into 5*l.* shares, to the intent that the members may be under no further liability to pay calls; or it may be desired to reduce the nominal capital to 7,000*l.* in 7*l.* shares, so that the members may be liable to pay further calls to the amount of 2*l.* per share instead of 5*l.* per share. Each of these operations is indisputably a reduction of capital, which, in the case of a company limited by shares, can only be effected by special resolution confirmed by the Court under the Act of 1867; and the great majority of the reductions of capital sanctioned by the Court involve one or other of such operations.

2. Another operation which is also treated as a reduction of capital within the Act of 1867 is as follows :—Suppose the capital to be 20,000*l.* in 20*l.* fully paid-up shares. The company finds that a capital of 10,000*l.* is sufficient for its purposes, and accordingly desires to return 10*l.* per share to its members, and to reduce the nominal amount of each share to 10*l.* There have been several cases in which such an operation has been sanctioned by the Court. Thus in the case of *The Telegraph Construction and Maintenance Co., Limited*, the nominal capital was 750,000*l.* in 37,500 shares of 20*l.* each. Of these only 37,350*l.* had been issued and were fully paid up. The company desired to repay 8*l.* per share and to reduce the shares to 12*l.* each. See *In re Telegraph Construction Co.*, 10 Eq. 384. The reduction was sanctioned by James, V.-C., in 1870.

PREC. I.

Another case of the same kind was that of *The Crimble Spinning Co.*, in which Malins, V.-C., by order dated 29th July, 1876, confirmed the following special resolution: "That 4,500*l.* of share capital be returned to the shareholders, that is to say, to reduce No. 1 share from 7*l.* 10*s.* to 5*l.* 12*s.* 6*d.*, and to reduce No. 2 shares from 4*l.* 10*s.* to 3*l.* 7*s.* 6*d.*" It appeared from the petition of the company that some years before a reduction of the company's capital of a similar character had been sanctioned by James, V.-C.

3. The following is another operation which has been treated as a reduction of capital within the meaning of the Act of 1867.

Suppose a company to have a nominal capital of 20,000*l.* in 10*l.* shares which have been fully paid up, and that it has lost one-half of its capital. The effect is that the company cannot pay any further dividends until the capital is replaced, for dividends can only be paid out of profits. But the members may desire to reduce the nominal capital by writing off and extinguishing the lost moiety thereof to the intent that the payment of dividends may be resumed, and that the nominal amount of the shares may be reduced to something nearer their actual value: or it may be that instead of having lost a portion of its capital it is found that the income of the company is not sufficient to pay more than a very small per-centage on the paid-up capital, and it is therefore desired to reduce the nominal amount of the shares so that they may become saleable at par instead of at a heavy discount.

In the case of the *Credit Foncier of England* the nominal capital was 2,000,000*l.*, divided into 10*l.* shares. The whole capital had been issued in 1866 as fully paid up, as the consideration for the transfer of the assets of a company in liquidation. In February, 1870, a special resolution was passed reducing the capital to 1,000,000*l.*, divided into 5*l.* shares. In January, 1871, this resolution was confirmed by Malins, V.-C. *In re Credit Foncier of England*, 11 Eq. 356. The circumstances which rendered the reduction expedient are not stated in the report, but it appears from Cracroft's "Trustees' Guide," (7th Ed.), that the shares before the reduction were selling at a discount of 50 per cent. and upwards. Probably the assets purchased were not worth 2,000,000*l.*

In the case of the *Ebbw Vale Steel, Iron, and Coal Company, Limited*, the company having lost part of its capital had passed a special resolution as follows:—

"That the nominal capital be reduced from 2,383,000*l.* in 74,475 shares of 32*l.* each, to 1,712,925*l.* in 74,475 shares of 23*l.* each, by the extinction on each of such shares of paid-up capital to the extent of 9*l.*, to the intent that the present liability of 3*l.* per share on all the shares (except the 525 fully paid-up shares), shall be preserved, notwithstanding such reduction."

A petition was presented to confirm the reduction, but Jessel, M. R., held that the court had no jurisdiction. *In re Ebbw Vale, &c., Co.*, W. N. 1877, 4. The decision appears to be correct, and not necessarily inconsistent with the cases above mentioned, but the observations of the M. R. in giving judgment would go to show that a return or extinction of capital can in no case be effected under the Act of 1867, and that the only operation which can be sanctioned is a reduction of liability as above in case 1. If this is the case, it certainly requires amendment. In the case of *Re Kirkstall Brewery*, W. N. 1877, 55, Bacon, V.-C., declined to sanction a reduction similar to that sanctioned by Malins, V.-C., in the case of the *Credit Foncier*, *ubi supra*, upon the ground that

Prec. I. it was not within the Act of 1867. On the other hand in the *National Arms and Ammunition Co.*, W. N.; 1877, 31, Malins, V.-C., followed his own decision in the *Credit Foncier*.

See further as to the proceedings upon a petition to confirm the reduction of capital, Buckley, 465 *et seq.*; Pemberton, 687 *et seq.*; Daniel, Ch. Pr., Vol. II., p. 1978 *et seq.*

A fortnight after the making of the order confirming the reduction is now usually fixed as the period after which the words "and reduced" may be discontinued.

As to reducing capital by "reconstruction," see *supra*, p. 477, *et seq.*

PRECEDENT II.

Prec. II. PETITION to COURT to sanction TRANSFER of BUSINESS of LIFE ASSURANCE COMPANY (a) under THE LIFE ASSURANCE COMPANIES ACT, 1870 (33 & 34 Vic. c. 61).

In Chancery (b).	} The title of such a petition	
Lord Chancellor.		must now be as in
Vice-Chancellor Malins.		Precedent I.

In the matter of the Companies Acts, 1862 and 1867 :

And in the matter of the Life Assurance Companies Act, 1870 :

And in the matter of the N—— Corporation, Limited (formerly called the —— Corporation, Limited).

To the Right Honourable the Lord High Chancellor of Great Britain. [*The address must now be as in Precedent I.*]

The humble petition of A., of ——, B., of ——, C., of ——, and D., of ——, the directors and also the liquidators of the above-named company and of the said company :

Showeth as follows :—

1. [*Formation of corporation—registered office in England—Objects, Life Assurance, &c.*]
2. [*Capital.*]
3. [*Change of name.*]

(a) By Section 14 of the above Act it is provided as follows :—

"14. Where it is intended to amalgamate two or more companies [*i.e.* life insurance companies], or to transfer the life assurance business of one company to another, the directors of any one or more of such com-

Proc. II.

panies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the Gazette, and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established.

Before any such application is made to the Court, a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy holder of both companies in case of amalgamation, or to each policy holder of the transferred company in case of transfer, by the same being transmitted in manner provided by Section 136 of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally; and the agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract herein provided.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate or in any company the business of which it is proposed to transfer dissent from such amalgamation or transfer.

No company shall amalgamate with another, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in accordance with this section.

Provided always that this section shall not apply in any case in which the business of any company which is sought to be amalgamated or transferred does not comprise the business of life assurance."

In the construction of the above Act the term "company" means any person or persons, corporate or unincorporate, not registered under the Acts relating to friendly societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom.

And the term "policy holder" means the person who for the time being is the legal holder of the policy for securing the life assurance, endowment, annuity, or other contract with the company.

And the term "Court" means, in the case of a company registered or having its head office in England, the High Court of Chancery; [*see now Subsection 2 of Section 34 of the Supreme Court of Judicature Act, 1873*]; in the case of a company registered or having its head office in Ireland, the Court of Chancery in Ireland; in all cases of companies registered or having its head office in Scotland, the Court of Session, in either division thereof.

(b) The above petition is taken from one presented to the Court in the year 1874. Malins, V.-C., made an order on it sanctioning the provisional agreement therein mentioned, and the transfer was successfully carried into effect.

4. The corporation, from the time of its formation until the

the corporation, or of its being able to reduce its expenditure to such amount as would enable it to carry on business without serious and increasing loss.

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11. Under the circumstances hereinbefore stated, it became necessary that arrangements should be made for the transfer of the liabilities and engagements of the corporation or otherwise for a liquidation of its affairs, and accordingly your petitioners A., B., C., and D., who were then, and up to the time of passing the extraordinary resolution to wind up the corporation hereinafter mentioned, continued to be, and subject thereto, still are the directors of the corporation, entered into the conditional agreement of the — day of —, 1874, hereinafter stated.

Arrangement
necessary.

12. By an agreement dated the — day of —, 1874, and expressed to be made between the directors of the corporation of the one part, and the directors of the association of the other part, and duly executed by your petitioners and by four of the directors of the association under their respective hands and seals, after reciting (as the facts were,) that by the several policies of life assurance specified in the first schedule thereto, and issued under the common seal of the corporation before the 30th day of January, 1874, the several sums mentioned in the sixth column of such schedule, amounting in the aggregate to 475,220*l.*, were assured to be paid to the persons at the times and in manner in the same policies respectively mentioned subject to the payment of the annual premiums amounting altogether to 15,206*l.* 3*s.* 2*d.* specified in the seventh column of the said schedule, and under the terms and conditions in the several policies respectively expressed. And that by the several policies of life assurance specified in the second schedule thereto, and issued under the common seal of the corporation since the 31st day of January, 1874, the several sums mentioned in the sixth column of such schedule were assured to be paid to the persons at the times and in manner in such policies respectively mentioned subject to the payment of the annual premiums specified in the seventh column of the last-mentioned schedule, and under the terms and conditions in the last-mentioned policies expressed. And that each of the said policies was based upon evidence satisfactory to the board of directors of the association, of the time and place of birth, and of the health of the person or each of the persons upon or

Conditional
agreement for
transfer of
liabilities of
corporation to
the associa-
tion.

Recitals.

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with reference to whose life or lives the assurance thereby granted or made was effected, and of such other particulars as the board of directors of the association deem necessary. And that by the four several annuity deeds specified in the third schedule thereto, sums amounting in the aggregate to 102*l.* 6*s.* 3*d.* per annum were secured to be paid to the persons and during the periods therein respectively in that behalf mentioned. And that re-insurances of the lives assured by divers of the before-mentioned policies have been effected by the corporation for sums amounting together to 16,665*l.* by the policies specified in the fourth schedule thereto at annual premiums amounting in the whole to 576*l.* 10*s.* 5*d.* And that an accurate valuation of the assets and liabilities of the corporation on the 31st day of January, 1874, under and in respect of the said policies and annuity deeds specified in the first and third schedules thereto, and of the net premiums thereafter receivable for the renewal of the last-mentioned policies had been made by — (the President of the Institute of Actuaries) upon the basis of "The 17 Offices Experience Tables 3½ per cent." It was witnessed and it was thereby agreed as follows:—

Transfer of
liabilities.

"(1.) Subject to the provisions hereinafter contained or referred to, and when and so soon as this agreement shall have been sanctioned and confirmed so as to become legally binding upon the corporation as herein-after mentioned, all the liabilities, debts and engagements of the corporation under and in respect of the several policies of life assurance specified in the first and second schedules hereto, and also under and in respect of the several annuity deeds specified in the third schedule hereto shall be assumed by the association, which shall pay and satisfy the same accordingly, and shall insure and indemnify the corporation and the shareholders thereof from and against all claims and demands under or in respect of the same policies and annuity deeds respectively, and all costs and expenses in anywise relating thereto. Provided always [*funds of association only to be answerable*].

Ages of
assured to be
admitted.

"(2.) The ages of the lives assured by the policies comprised in the said first and second schedules as appearing in the books of the corporation shall be admitted

as correct in all cases in which such admission has been made by the corporation.

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“(3.) In consideration of the premises the corporation shall within fourteen days after the arrangement intended to be effected by this agreement shall have been sanctioned and confirmed by the Court of Chancery so as to become legally binding upon the corporation, pay to the association the sum of 32,332*l.* 3*s.* 2*d.*

Consideration to be paid to association.

“(4.) The corporation shall also at the same time assign to the trustees of the association the several policies specified in the fourth schedule hereto, and pay to the said trustees or the association all premiums received by the corporation since the 31st day of January, 1874, upon or in respect of the policies comprised in the said first and second schedules (less the commissions actually paid or allowed thereon), and all premiums thereon which shall then be due and unpaid, or which shall thereafter become due, shall be received and detained by the association, but the corporation shall be allowed and shall be entitled to deduct from the sums by this clause agreed to be paid by them the ordinary and reasonable expenses of conducting the business of the corporation from the said 31st day of January, 1874, including the remuneration of the directors thereof for the current year, and the costs of the corporation of and incidental to this agreement, and of all legal proceedings and matters for carrying the same into effect, provided the said costs do not exceed the sum of 300*l.*

Policies of re-insurance to be made over.

“(5.) The corporation shall also be allowed, and shall be entitled to deduct from the premiums or sums mentioned in Clause 3 of this agreement the amounts paid by the corporation since the 31st day of January, 1874, under or in respect of any of the said policies specified in the first and second schedules which have fallen in or become claims, or which have been surrendered, or on account of the said annuities, or for premiums on the policies specified in the fourth schedule. And all claims now due, or hereafter to become due, in respect of any of the said policies which have so fallen in as aforesaid, shall be paid and satisfied by the association pursuant to the provisions contained in Clause 1

Corporation entitled to make certain deductions from monies received.

Proc. II.

Securities to
be accepted as
part of the
consideration.

of this agreement, but the corporation shall not be at liberty to accept the surrender of any policy after the date of these presents without the consent in writing of the association.

“(6.) The association shall accept such of the securities or assets of the corporation as the directors of the corporation shall require at the value whereat the same were estimated to stand in the balance-sheet of the corporation, dated the 31st day of January last, in satisfaction *pro tanto* of the said sum of \$2,332¹. 3s. 2d upon the directors of the corporation certifying to the best of their knowledge, information, and belief that such valuation is correct, but such certificate is not to be in the nature of a guarantee, nor are the directors to incur any liability whatever in respect of such certificate, but in addition to the said certificate the corporation shall produce and hand over to the association all surveyors’ reports and valuations and other documents showing the value of the assets of the corporation, and all securities and assets so required to be accepted by the association shall in the event of this agreement being confirmed and carried into effect be transferred and assigned to the association or its trustees at the time at which the said sum of \$2,332¹. is hereby made payable. And in case any mortgage securities shall be included therein, no investigation of the titles shall be made, such titles having been already investigated and approved by the law officers of the corporation, nor shall any objection or requisition be made in respect thereof.

Commissions.

“(7.) The several persons to whom the corporation has heretofore paid, or contracted to pay, commissions at the rate of 5 per cent. upon the premiums from time to time received for the renewal of any of the policies comprised in the first and second schedules, shall be entitled as from the 31st day of January, 1874, to receive such commission from the association except in cases where such commission shall have been paid by the corporation and deducted from the premiums to be paid over to the association under Clause 4 of the agreement.

When corporation to

“(8.) From and after the sanction and confirmation by the Court of Chancery of the arrangement intended to be

effected by this agreement, the corporation shall wholly cease to grant any assurances upon lives, or in any manner to continue the business of life assurance, or the granting of annuities or endowments, but up to that time the corporation may continue to grant policies of life assurances in the ordinary course of business, provided that every such policy be first submitted to and approved by the directors of the association. And the association shall undertake all the risk and liabilities of the corporation in respect of such last-mentioned policies, and shall insure and indemnify the corporation and the shareholders thereof from and against the same, and all costs and expenses in anywise relating thereto.

PREC. II.

cease to carry on business.

- "(9.) If when the profits and losses of the corporation shall have been ascertained any surplus profits shall appear to have been realised and to be divisible among the shareholders and holders of policies effected according to the participating scale pursuant to Clause 102 of the articles of association of the corporation, then the share of such profits apportioned to the holder of any of the policies specified in the said first and second schedules shall (subject to the rights of non-assenting policy holders, and unless the holder of such policy shall elect to receive the same in a present cash payment) be paid over to the association and shall be applied and appropriated at the option of the party entitled thereto by way of addition to the amount assured by such policy or in reduction of the premium payable thereon, either for the whole term of life or for the period of five years then next ensuing (which addition and reduction respectively to be commuted on the basis of 'The 17 Offices Experience Tables 3½ per cent. ;') but the association shall not be required to indemnify the corporation against any claims or disputes which may arise with respect to the said surplus profits or the distribution thereof among the holders of the policies granted by the corporation, nor in anywise be liable in respect of the said surplus profits beyond the sum or sums which the association shall or may receive under this clause.

As to payment of surplus profits to association.

Prec. II.

On what terms
policy holders
to be entitled
to effect
novation.

“(10.) If any person entitled to the benefit of any policy comprised in the first and second schedules hereto shall in writing under his or their hand and seal assent to this agreement and release the corporation from all liability in respect of such policy, and declare his or their consent and agreement that such policy and the assurance thereby effected, and all his rights and privileges in respect thereof shall be subject to all the rules and regulations of the association, then (subject to the proviso contained in Clause 1 of this agreement) such policy shall be as valid and of as full force and effect against, in favour of, or in relation to the association; and the person or persons entitled to the benefit thereof shall have the same rights and privileges in all respects, as if such policy had been granted or issued by the association on the 31st day of January, 1874, and had been duly executed in such manner as is required for rendering policies valid and binding on the association, but for the purpose of computing the surrender value of any such policy, the same shall be deemed to bear date on the day upon which it was originally issued by the corporation, and a memorandum to that effect so executed as aforesaid shall be indorsed on such policy, and upon every future division of profits of the association, the holder of such policy, if the same has been effected upon or according to the participating scale of rates adopted by the corporation, shall be entitled to participate in such profits in the same manner as if the said policy had been granted or issued by the association upon the participating scale of rates on the 31st day of January, 1874. But no policy holder or other person entitled as aforesaid who shall refuse or neglect so to assent to this agreement, or to execute such release, or who shall elect to make a claim against the corporation in respect of this policy, shall be entitled to any right or remedy against the association, or to any other benefit under this agreement, it being the intent and meaning of the parties hereto in all cases in which the corporation shall not have been released from liability in respect of a policy comprised in the said first or second schedules hereto, the asso-

ciation shall be bound only to indemnify the corporation and the shareholders thereof against such liability in accordance with the stipulations in that behalf hereinbefore contained.

Prec. II.

- “(11.) The corporation shall allow the association and its trustees for the time being, either in the name of the corporation or otherwise, but at the costs and charges of the association, to receive and give effectual receipts and discharges, and to sue for all monies assured or secured by the several policies specified in the fourth schedule hereto, and generally to use the name of the corporation in any proceedings which the association may be advised to take in respect of any of the liabilities, debts, engagements, and policies in these presents mentioned or referred to, the association however indemnifying the corporation for so using its name. Association to be entitled to sue in name of corporation, &c.
- “(12.) The directors of the corporation shall take the necessary proceedings under the articles of association thereof and the Companies Acts for rendering this agreement valid and binding upon the corporation in all respects, and carrying the same into effect, and shall make the necessary application to the Court of Chancery under the statute relating to life assurance companies for the confirmation of this agreement and of the arrangement intended to be effected hereby, and upon such sanction and confirmation being obtained, all requisite instruments and assurances shall be executed by all necessary parties for carrying such arrangement into effect. As to confirmation of agreement.
- “(13.) The corporation and the association shall respectively bear and pay their own costs of and incidental to the agreement and of all such proceedings and matters as may be requisite for carrying the same into effect, except as mentioned in Clause 4 hereof. Costs thereof.
- “(14.) This agreement is conditional upon the consent thereto or ratification thereof being obtained from the members of the association in general or special meeting if required, and the same is not to be binding upon any of the directors parties hereto personally. And in case this agreement shall not be ratified as aforesaid and sanctioned and confirmed by the Court of Chancery, Conditions subject to which agreement made.

Proc. II.

Books of
account, &c.,
to be handed
over.

Guarantee
fund.

so as to become legally binding upon both the association and the corporation, before the 31st day of January, 1875, the same shall be abandoned and be void.

“(15.) The corporation shall, when this agreement has become binding as aforesaid, hand over to the association, upon being requested so to do, all books, vouchers, letters, proposals, declarations, and other papers and documents relating in anywise to the several policies and annuities in the first, second, third, and fourth schedules hereto mentioned, and in like manner shall hand over to the association all deeds, bonds, bills, notes, and other securities, comprising, affecting, or in anywise relating to the assets and securities referred to in the sixth schedule to this agreement.

“(16.) Until the 1st day of December, 1875, the said sum of 32,332*l.* 3*s.* 2*d.* and other the monies which shall be received by the association or its trustees pursuant to the stipulations herein contained, or under or by virtue of any of the policies specified in the said fourth schedule hereto shall be continued or invested in or upon some of the investments authorised by the articles of association of the corporation and also by the rules of the association respectively, and the same with the income arising therefrom shall be held as a separate trust fund in the first place for more effectually securing the payment and satisfaction by the association pursuant to the stipulations in that behalf hereinbefore contained of all liabilities, debts, claims, and demands under and in respect of the said policies and annuity deeds comprised in the first three schedules hereunder written, and the policies to be granted pursuant to Clause 8 of this agreement, according to the tenor of the said policies and annuity deeds respectively and subject thereto, shall belong to the general funds of the association. A separate account of the said monies, investments, and income shall be opened and kept in the books of the association, and such account shall from time to time be credited with the monies so received by the association as aforesaid, and shall be debited with all sums paid by the association in respect

of policies and annuity deeds specified in the first three schedules hereto or to be granted pursuant to Clause 8 of this agreement or any of them, or for premiums on policies comprised in the fourth schedule hereto, and upon every such payment a portion of the said trust monies, stocks, funds, and securities equal thereto in amount or value, shall be freed and discharged from the hereinbefore mentioned trust, and shall thereupon fall into and become part of the general fund of the association.

“(17.) If any dispute [*arbitration clause*].”

13. At a general meeting of the corporation duly held on the — day of June, 1874, and of which notice specifying the intention to propose the resolutions hereinafter mentioned was duly given, the following extraordinary resolutions (among others) were passed unanimously by the members of the corporation for the time being entitled according to its regulations to vote who were there present in person or by proxy, namely :

- (1.) That the conditional agreement dated, &c., and made, &c., (meaning thereby the said stated agreement) be ratified and confirmed either absolutely or with such modifications and qualifications as may be deemed advisable.
- (2.) That the directors of the corporation be authorised and empowered to make application to the Court of Chancery under the statutes in that behalf for the sanction and confirmation of such agreement, and the arrangement intended to be effected thereby, and upon such sanction and confirmation being obtained, to do all acts and to execute (under the seal of the corporation or otherwise) all instruments and assurances which may be requisite or expedient for carrying such agreement and arrangement into effect.
- (3.) That it has been proved to the satisfaction of this meeting that the corporation cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.
- (4.) That the corporation be wound up voluntarily. And at the said meeting your petitioners A., B., C., and D., were appointed liquidators for the purpose of winding up the affairs of the corporation and distributing the property.

Proc. II.

Arbitration.

Extraordinary resolutions approving agreement and for winding up.

- Pres. II.** 14. On the — day of — it was ordered by his Honour the Vice-Chancellor Sir Richard Malins that the voluntary winding up of the corporation should be continued subject to the supervision of this honorable Court.
- Supervision order.
15. [*Approval of the agreement by the association in general meeting.*]
- Statutory requisitions complied with.
16. On the — day of — a statement of the nature of the transfer proposed to be effected under the said agreement of the — day of —, together with a copy of the said agreement and an abstract containing the material facts embodied therein, and also a copy of the actuarial report of the said — upon which such agreement is founded, was forwarded to each policy holder of the corporation in manner provided by Section 136 of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally. The said agreement remained open for the inspection of the policy holders and shareholders of the corporation at the office of the corporation for a period of 15 days from the issuing of the before-mentioned abstract, and a notice to that effect was appended to the statement sent to the policy holders as aforesaid.
- Position of association.
17. The association has been established for upwards of — years. During that period it has made large profits, and now its invested funds amount to more than 600,000*l*.
- Arrangement beneficial.
18. The arrangement intended to be effected by the said conditional agreement is an equitable arrangement, and it is expedient and will be mutually beneficial to the shareholders and policy holders of the corporation and to the association that the same agreement should be confirmed and carried into effect. In that event the shareholders of the corporation will receive a bonus upon their subscribed share capital which there is no reasonable prospect of their ever obtaining by any other means, and the winding up of the corporation will be facilitated and rendered less costly. Moreover, if the said agreement be confirmed each policy holder of the corporation will acquire the right to a novation of his policy upon beneficial terms if he shall think fit so to do instead of receiving the present value thereof, and the association will thereby secure an augmentation of its insurance business without a corresponding increase of working expenses.

Your petitioners therefore humbly pray :—

1. That the said conditional agreement of the — day of **Prec. II.**
 — and the arrangement intended to be effected
 thereby may be sanctioned and confirmed by this
 honorable court and carried into effect, and that your
 petitioners, the directors and liquidators of the said
 corporation, may be at liberty to execute and do all
 assurances and things which shall be necessary for that
 purpose.
2. That provision may be made for the costs of and incident
 to this application.
3. That your Lordship may make such further or other
 order in the premises as to your Lordship shall seem fit.
 And your petitioners will ever pray, &c.

NOTE.—It is intended to serve this petition on the above-
 named E., F., G., and H., as trustees of the — Association.

PRECEDENT III.

PETITION to COURT to sanction ARRANGEMENT BETWEEN a **Prec. III.**
 COMPANY and its CREDITORS under the provisions of the
Joint Stock Companies Arrangement Act, 1870 (33 & 34
Vic. c. 104 (a)).

In the High Court of Justice,

Chancery Division.

Vice-Chancellor Malins.

In the matter The *Bessemer* Steel and Ordnance
 Company, Limited.

And in the Matter of The Companies Acts, 1862 and
 1867.

And in the Matter of The Joint Stock Companies
 Arrangement Act, 1870.

To Her Majesty's High Court of Justice.

The humble petition of C. F. K. of —, in the county of

(a) The Act above referred to is as follows :

"Whereas it is expedient to amend the law relating to the liquidation
 of joint stock and other companies : Be it enacted, &c." as follows :

1. This Act may be cited as "The Joint Stock Companies Arrangement **Short title.**
 Act, 1870."

2. Where any compromise or arrangement shall be proposed between **Where com-**

Proc. III. —, and J. E. F. A., of —, in the county of —, the official liquidators of the above-named company (hereinafter called the company) sheweth as follows :—

Incorporation. 1. The company was incorporated under the Companies

promise proposed, Court of Chancery may order a meeting of creditors, &c., to decide as to such compromise.

a company which is, at the time of the passing of the Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, under the Companies Acts 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and if a majority in number representing three-fourths in value of such creditors or class of creditors present, either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company."

Interpretation.

Act and Companies Act to be read together.

3. The word "company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

4. This Act shall be read and construed as part of "The Companies Act, 1862."

Until this Act was passed the majority of the creditors of a company in course of being wound up under the Act of 1862 had no power, except under Section 136, to bind the minority to accept a composition.

Neither Section 159 of the Act, which is as follows :

"The liquidators may, with the sanction of the Court where a company is being wound up by the Court, or subject to the supervision of the Court and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable."

Nor Section 160, which provides that :

"The liquidators may, with the sanction of the Court, where the company is being wound up by the Court, or subject to the supervision of the Court and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give com-

Acts, 1862 and 1867, for the purposes mentioned in the articles of association, dated the 18th of October, 1871, and was duly registered on the 19th of October, 1871. Preo. III.

2. The company laid out large sums of money in the erection of a new building, and expended money. complete discharges in respect of all or any of such calls, debts, or liabilities,"—gave the majority of the creditors such a power.

"The 159th and 160th sections seem to me to provide that a company by its official liquidators, with the sanction of the Court, is to have exactly the same power of compromising, both with its creditors and its debtors, as an individual would have. It has the power of saying to any class of creditors, 'If you will take so much less than your claim, we will pay you that without raising any question.' And it has a right to say to the contributories who are the company's debtors as to unpaid calls, 'Pay us so much of your debt and we will put an end to all questions between us.' But this is a compromise, in the one case, between the company and its creditors who choose to accept it, and in the other, between the company and its debtors who choose to accept it. There is nothing in the Act which enables one creditor to bind another creditor to accept a compromise, or which enables one debtor to bind another debtor with respect to paying a compromise. And that was the difficulty which was felt when the Act of last Session, The Joint Stock Companies Arrangement Act, 1870, was passed. . . ." Per James, L. J., in *In re Albert, &c., Co.*, 6 Ch. 385.

Sections 136 and 137 of the Act of 1862, are as follows :

"136. Any arrangement entered into between a company about to be wound up voluntarily or in course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

"137. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same."

But although Section 136 enabled a majority to bind a minority, it is not applicable in a compulsory winding up, and it is doubtful whether it can be relied on in a winding up subject to supervision. Buckley, 329.

It will be observed that an arrangement under Section 2 of the Act of 1870, can be effected much more readily than under Section 136 of the Act of 1862. Under the former all that is required is :

- (a) The sanction of a majority in number representing three-fourths in value of the creditors present in person or by proxy at a meeting :
 - (b) The sanction of the Court.
- But under the latter there must be :
- (a) An extraordinary resolution, see *supra*, p. 289.
 - (b) The approval of three-fourths in number and value of the creditors [*i.e.*, of all the creditors].
 - (c) The sanction of the Court if appealed to.

A question was raised in the case of *The Bessemer Steel and Ordnance Co.*, 1 Ch. Div. 251, whether under Section 2 of the Act of 1870, the majority

Prec. III. tion of works, machinery, and plant, and thereby and in the
Debts. course of its dealings incurred liabilities to a very considerable amount.

Winding up
 petition. 3. A petition for the winding up of the company was presented on the 28th of May, 1874, and by an order of the Vice-Chancellor Sir Richard Malins, made at chambers on the 28th of May, 1874, your petitioner E. F. A. and T. S. E. and A. W. were appointed provisional official liquidators of the company.

Order thereon. 4. By an order of the said Vice-Chancellor Sir Richard Malins, dated the 24th of July, 1874, the company was ordered to be wound up compulsorily by the Court, and by order dated the 4th of August, 1874, your petitioners were appointed official liquidators of the said company.

Cash to credit
 of liquidators. 5. There is now standing in the Bank of England to the credit of your petitioners, as such official liquidators, in cash and exchequer bills the sum of 23,000*l.* or thereabouts.

W. S. D. a
 creditor. 6. W. S. D., of —, one of the directors of the company, claims to be a creditor for 45,000*l.* or thereabouts, and is

ought not to be a majority representing three-fourths in value of *all* the creditors of the company. In that case the debts were 170,000*l.* A meeting of creditors was held at which seventy creditors, representing 120,002*l.* 12*s.* 3*d.*, were present. All the creditors present, with the exception of one, who claimed 4*l.* 10*s.* 1*d.*, approved the proposed arrangement, but 120,002*l.* 12*s.* 3*d.* was less than three-fourths of the total debts. However, Malins, V.-C., said: "I think that the agreement should be carried into effect. All the creditors of the company received notice of this meeting, and it must be presumed that those who did not attend left it to those who did to decide whether the agreement was advantageous or not, or they took so little interest in the matter that they did not think it worth their while to attend. At all events, I think that under the Act of Parliament only those creditors who were present at the meeting are to be attended to, and that three-fourths in value of those present are sufficient to sanction the contract."

The above Precedent (III.) is a copy of the petition which was presented in this case.

In the case of a life assurance company the Court may be unable to exercise the power conferred by Section 2 of the Act of 1870 by reason of the impossibility of ascertaining the amount of the debts, for a policy for 1000*l.* on the life of one person may be a very different thing from a policy on the life of another person for the same amount. *In re Albert Life Assurance Co.*, 6 Ch. 381.

Although the Act of 1870 only requires a meeting of the creditors, the Court may think fit to submit the proposed arrangement to a meeting of the contributories also. See *In re Western of Canada Oil, &c., Co.*, W. N. 1874, 148. In this case an arrangement was sanctioned by Jessel, M. R., after being approved at meetings of the creditors and contributories. See further, *infra*, p. 591, *et seq.*

admitted as a creditor of the company by your petitioners, the said official liquidators, to the amount of 44,275*l*. **Prec. III.**

7. The several other creditors whose names or descriptions appear in the first schedule to the agreement hereinafter mentioned, have also been admitted by your petitioners the said official liquidators, as creditors of the company for the several sums in the said schedule set opposite to their respective names or descriptions, which sums amount in the aggregate to the sum of 91,556*l*. 18*s*. 10*d*. There are other claims against the company of considerable magnitude still outstanding, some of which are disputed, and others are as yet unascertained, all which claims are hereinafter referred to as the unadmitted claims. **Schedule of creditors.**

8. In the course of the winding up, disputes arose in reference to certain securities given, or alleged to have been given, by the company to the — Bank of — and to the said W. S. D., the settlement or decision of which disputes would necessarily take a considerable time and cause very considerable expense, and the said W. S. D. accordingly laid a proposal before your petitioners the liquidators, by which he was to take over the company's assets, and undertake to pay a composition of 5*s*. in the pound to the company's creditors in discharge of their claims. **Unadmitted claims.**

9. At a meeting of the principal creditors of the company, held on the 14th of May, 1875, the representatives of three of the principal creditors were appointed a committee to investigate the position of the company and to report thereon, and as to the advisability of accepting the said proposal of the said W. S. D., and on the 11th of June, 1875, the said committee made their report to the creditors of the company approving of the said proposal in the form of the arrangement hereinafter stated, and recommending adoption by the company's creditors, and the acceptance of a composition of 5*s*. 3*d*. in the pound. **Disputes in liquidation. Proposal by W. S. D.**

10. The said arrangement so approved of by the said report was drawn up in the form of an agreement made between the company and your petitioners of the one part, and the said W. S. D. of the other part, and was (so far as is material to be here stated) in the words and figures following, namely:—
“Memorandum of Agreement made and entered into this — day of —, 1875, between The Bessemer Steel and Ordnance Company, Limited (hereinafter called the company) **Committee of creditors.** **Proposed agreement.**”

Proc. III

and C. F. K. and J. E. F. A., the official liquidators of the company of the one part, and W. S. D., of —, of the other part (then follow recitals stating to the effect aforesaid). Now these presents witness, and (subject to the approval of the said Vice-Chancellor) it is hereby agreed between and by the said company and its official liquidators on the one part, and the said W. S. D. for himself, his heirs, executors, and administrators on the other part, as follows: that is to say,—

W. S. D. to
release com-
pany.

“(1.) The said W. S. D. shall forthwith release the company, and the said official liquidators thereof, of and from all sums of money due or alleged to be due or claimable from the company to or by the said W. S. D., and generally from all claims and demands whatsoever.

W. S. D. to
pay into bank
sufficient to
pay composi-
tion on ad-
mitted claims.

“(2.) The said W. S. D., his executors or administrators, shall within fourteen days after these presents shall have been approved by the said Vice-Chancellor, pay to the credit of the said official liquidators at the Bank of England such a sum of money as, with the sum of 19,979*l.* 6*s.* 8*d.* (being the sum of 23,979*l.* 6*s.* 8*d.* now in the Bank of England less the sum of 4,000*l.* reserved), will make up the full sum of 24,033*l.* 14*s.*, being the amount of a dividend of 5*s.* 3*d.* in the pound on the total amount of the said admitted claims.

And also on
other claims
when allowed.

“(3.) The said W. S. D., his executors or administrators, shall also within fourteen days from the date of the allowance by the said Vice-Chancellor or the Court of Appeal of any of the said unadmitted claims, pay to the credit aforesaid such a sum of money as with so much of the amount (if any) then standing to the same credit as the judge shall direct, shall be equal in amount to a dividend of 5*s.* 3*d.* in the pound on the said unadmitted claim or claims so allowed.

How a sum of
4000*l.* reserve
to be applied.

“(4.) The said official liquidators shall be at liberty immediately, or so soon as conveniently may be after the payment of the aforesaid credit of the sum mentioned in the second clause of this agreement, to apply with the sanction of the said Vice-Chancellor the sum of 4,000*l.*, part of the monies which will then be standing to the credit aforesaid (or so much thereof as may be necessary) in payment of the sum of 100*l.* to the aforesaid committee for their expenses, and in part payment of

the costs, charges and expenses now remaining unpaid of the provisional official liquidators and official liquidators, and part payment of the remuneration to the official liquidators, and to apply the said sum of 24,033*l.* 14*s.*, being the amount of the said dividend of 5*s.* 3*d.* in the pound in paying to the said several creditors enumerated in the first schedule hereto a dividend or composition at the rate of 5*s.* 3*d.* in the pound on the said admitted claims, being the several and respective amounts appearing opposite to the respective names or descriptions of the said creditors in the first schedule hereto.

PREC. III.

- “(5.) The said official liquidators shall be at liberty from time to time immediately or so soon as conveniently may be after the payment to the aforesaid credit of any sum or sums of money pursuant to Clause 3 of these presents, to pay out of the monies then standing to such credit, with the sanction of the said Vice-Chancellor, to the creditor, or several and respective creditors, in respect of whose debt or debts such sum or sums of money shall have been paid to the said credit, the dividend or composition of 5*s.* 3*d.* in the pound on the amount of their respective debts.

When liquidators may pay creditors.

- “(6.) The said W. S. D. shall pay to the credit aforesaid the costs, charges, and expenses as between solicitor and client, in, about, or relating to the winding up of the company's affairs, including therein the costs of the petitioners and of the creditors and shareholders appearing on the petition to wind up, and directed by the said order of the 24th July, 1874, to be allowed, and also the costs of the C. H. Iron Company, Limited, in reference to this matter, including the costs incident to their attending before the judge in chambers under the last-mentioned order, such costs, charges and expenses being taxed by the proper officer (in case the parties differ), and also the remuneration of the said official liquidators, and of the said provisional official liquidators of the company, such remuneration to be fixed by the judge (in case the parties differ), such payments except as to the sum payable under Clause 2 of this agreement to be from time to time made within

Costs of winding up, &c.

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Liquidator to
get in assets,
which are to
belong to
W. S. D.

fourteen days after the said costs and remuneration shall respectively be ascertained.

“(7.) The said official liquidators or other the official liquidators or official liquidator for the time being of the said company shall, unless requested not so to do by the said W. S. D., his executors or administrators, collect, get in, and realise such assets of the company as shall be outstanding at the date of the order to be made approving of this agreement, but subject as to money due in respect of calls to the sanction of the said Vice-Chancellor, and out of the monies to arise from such collection, getting in, and realisation shall, in the first place, pay the costs, charges and expenses of such collection, getting in, and realisation, and in the next place shall make all the payments hereinbefore agreed to be made by the said W. S. D., and shall stand possessed of the residue thereof after all such payments shall have been made, in trust for the said W. S. D., his executors, administrators, and assigns. But the said W. S. D., his heirs, executors, or administrators shall save, harmless and indemnified, the said official liquidators or other the official liquidators or official liquidator for the time being against all losses, costs, charges, damages, or expenses which they or he may incur, sustain, or become liable to pay by reason of any acts, deeds, or proceedings which they or he may do, perform, or take in reference to such outstanding assets.

Upon pay-
ment of all
claims, assets
to be made
over to
W. S. D.

“(8.) When and as soon as all the said payments shall have been made either by the said W. S. D. or by the said official liquidators or official liquidator as aforesaid, all the lands, leases, and buildings, and stock in trade, plant, and machinery belonging to the said company, and all other the rights, claims, credits, and assets of the company (subject to existing charges thereon) including the benefit of all sums of money due to and recoverable by the said company in respect of calls and all other the rights, claims, credits, and assets of the company, or such part thereof as shall not have been collected, got in, and realised as aforesaid shall be conveyed and assigned to the said W. S. D., his heirs,

executors, or administrators, according to the nature thereof, or to some person or persons in trust for him, his heirs, executors, or administrators, or as he or they shall direct, but that no proceedings for the recovery of sums of money due to the company in respect of calls shall be had or taken except with the sanction of the said Vice-Chancellor.

Proc. III.

- “(9.) Notwithstanding this agreement and the said order to be made hereon, the winding up of the company shall continue so far as may be necessary for the purpose of carrying this agreement into effect, and for the purpose of settling the claims of creditors or persons claiming to be creditors other than those particularised in the said first schedule hereto, which shall not be disturbed, and of enforcing payment of calls due from contributories, but the costs, charges, and expenses as between solicitor and client of and relating to all future proceedings under the winding-up order, including the future remuneration of the said official liquidators or other the official liquidators or official liquidator for the time being, the amount, in case the parties differ, of such costs, charges, and expenses to be taxed by the taxing master, and of such remuneration to be fixed by the judge, shall be borne and paid by the said W. S. D., his executors or administrators in manner aforesaid, and the said W. S. D., his executors or administrators, and also the said official liquidators or other the official liquidators or official liquidator for the time being shall be at liberty to apply from time to time to the Court, or to the said Vice-Chancellor in chambers as he or they may be advised.
- “(10.) All deeds of release, conveyances, assignments and other deeds, if any, to be executed for the purpose of giving effect to this agreement, shall be prepared by the party by whom the same shall be required, and shall be perused and executed by the other party, and by all other necessary parties or companies as the judge may direct, and every such deed shall, in case of difference, be settled by the said Vice-Chancellor, but the costs, charges, and expenses of the preparation, perusal, and execution, and all other costs, charges, and expenses of

Winding up
to continue
for certain
purposes.

Deeds to be
executed.
As to costs of.

Prec. III.

- and incidental to such deeds shall be borne and paid by the said W. S. D., his executors or administrators in manner aforesaid.
- Agreement conditional. “(11.) These presents are conditional on the sanction of the Court being obtained hereto on or before the 31st day of December, 1875, and in case the sanction of the said Court shall not be obtained hereto on or before that day nothing herein contained shall in anywise affect or prejudice the rights of the said parties hereto as against each other, but each of the said parties hereto shall be at liberty to prosecute such rights as if these presents had not been signed.”
- Schedule to agreement. There was a first schedule to the said agreement containing a complete list of all the said admitted creditors of the company (other than the said W. S. D.) arranged in alphabetical order, with the various amounts due to them respectively set against their respective names in the said first schedule, and also a second schedule, containing a verbatim copy of the report of the said committee recommending the adoption and ratification of the said proposed arrangement.
- Approval of form of agreement by V.-C. Meeting ordered. 11. The form of the said agreement was submitted to His Honor the Vice-Chancellor Sir Richard Malins, in chambers, and duly approved of by him, and His Honor thereupon directed that a meeting of the creditors of the company should be summoned by advertisement in the *London Gazette* and certain other newspapers, to consider the terms of the said agreement, and that your petitioner C. F. K. should act as chairman of the said meeting, which was to be held at the offices of Messrs. — & Co., No. —, Walbrook, in the city of London.
- Meeting called. 12. Your petitioner proceeded to summon a meeting of the creditors of the company in accordance with the said direction, but by inadvertence the advertisements which His Honor had directed were not inserted in the papers specified, but instead thereof a circular convening the said meeting in the same form as the advertisement would have been if it had been published was sent by post to each of the creditors of the company personally.
- and held. 13. The said meeting was held on the 24th of September, 1875, in accordance with the said circular, and at the place and time therein mentioned, viz., at the offices of Messrs. —

& Co. aforesaid, at — o'clock on Friday, the 24th of September, 1875. Your petitioner, C. F. K., took the chair at the said meeting, as directed by His Honor the Vice-Chancellor Sir Richard Malins as aforesaid.

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14. The said meeting was attended either personally or by proxy by sixty-nine creditors to whom debts against the company have been allowed, or whose debts appear in the company's books, as are admitted by your petitioners to be due, amounting in the whole to the value of 120,002*l.* 12*s.* 3*d.*, the total indebtedness of the company being 170,000*l.*, or thereabouts. The question was then submitted to the said meeting whether the creditors of the company approved of the said proposed agreement, which was then and there read to all the creditors who were present.

Who attended.

15. All the creditors of the company then present as representing as aforesaid 120,002*l.* 12*s.* 3*d.* (with the exception of one whose debt amounts to the sum of 4*l.* 10*s.* 1*d.*) did at the said meeting approve of the said proposed arrangement, and desired that the same might be sanctioned by the High Court of Chancery and carried into effect. The creditors so agreeing as aforesaid constitute a majority in number, representing far more than three-fourths in value of the creditors of the company. The said creditor for 4*l.* 10*s.* 1*d.*, who objected as aforesaid, objected solely on the ground that his claim was for poor rate and ought to be paid in full.

Approval of agreement by majority.

16. On the 11th of October, 1875, the following advertisement was inserted in all the newspapers in which the advertisement convening the said meeting was directed to be inserted as aforesaid, except the *London* and *Edinburgh Gazettes*, the conductors whereof required for the purpose the specific direction of the High Court of Chancery, which could not be obtained during the vacation:—"In the matter of the Bessemer Steel and Ordnance Company, Limited; and in the matter of the Companies Acts, 1862 and 1867; and in the matter of the Joint Stock Companies Arrangement Act, 1870. Notice is hereby given, that, &c., [*of meeting having been held—that compromise approved—that any creditor objecting to adoption of agreement to give notice to liquidators before 25 Oct. instant, when application would be made to the V.-C. for order confirming the compromise.*]

Advertisement of resolutions.

17. Notice of objection to the said arrangement has been

Notices of objections.

Prec. III. received by your petitioners from Messrs. H. and A. G. B., the lessors of the premises occupied by the said company at Greenwich, who object to any arrangement being carried out with the said W. S. D., unless and until a provision is made for satisfying the liabilities of the company under the lease. Notice of objection has also been received from Paynes, &c., Company, creditors for 113*l* 17*s.*, but from no other creditor.

18. The said agreement was, on the 27th day of October last, duly signed by the said W. S. D.

Arrangement
for benefit of
company.

19. It will be in the judgment of your petitioners much for the benefit of the company that the said arrangement should be carried out. The creditors of the company have as aforesaid approved it practically unanimously, and the rights and claims (if any) of creditors having a claim to be entitled to security upon any portion of the assets of the company or their calls upon the shareholders thereof are intended, as regards such security, to be left unaffected by the said agreement.

Your petitioners therefore humbly pray—

1. That (without prejudice to any existing security or charge upon the assets of the company or on any call made or to be made on the shareholders thereof) the said agreement hereinbefore in part stated and agreed to by the said creditors of the company as aforesaid may be sanctioned and confirmed by an order of this honorable Court so as to be binding on all the creditors of the company and on your petitioners and the contributories of the company.
- 2 That all deeds, documents, acts, matters, and things, necessary or expedient for the carrying out of the said agreement may be ordered to be executed and done by all necessary and proper parties under the direction of this honorable Court.
3. That such further or other order may be made in the premises as shall seem meet.

And your petitioners will ever pray, &c.

NOTE.—It is intended to serve this petition on the above-named W. S. D.

The order made on the above petition was as follows :

“ Upon the application of C. F. K., of, &c., and J. E. F. A., of, &c., the

official liquidators of the above named company, on the 16th day of November, 1875, preferred into H. M. High Court of Justice, and upon hearing counsel for the petitioners, and for W. S. D., and upon reading the said petition, an order dated, &c., the agreement dated, &c., in the said petition mentioned, an affidavit, &c. This Court doth order that (without prejudice to any existing security or charge upon the assets of the said company or on any call made or to be made on the shareholders thereof,) the said agreement be sanctioned and confirmed by this Court, so as to be binding on all the creditors of the company, and on the petitioners and the contributories of the company, and that the said agreement be carried into effect, and that all deeds, documents, acts, matters, and things, necessary or expedient for the carrying out of the said agreement, be executed and done by all necessary parties under the direction of the Court." Malins, V.-C., 27 Nov., 1875, A. 1807.

The following are examples of other orders made under the above Act :

"Upon the application of the liquidators of the above named company by summons, dated the 25th Nov., 1875, and upon hearing the solicitor for the applicants, and upon reading an affidavit of, &c., filed, &c., and the exhibits, A. and B., therein referred to, being respectively the proposals for arrangement hereinafter mentioned, and the list of creditors of the said company, an order dated the 12th Nov., 1875, the report of the result of the meeting of creditors summoned pursuant to the said order, an affidavit of — filed, &c. It is ordered that the arrangement proposed between the said company and its creditors, contained in the said proposals, (being an agreement dated the 4th day of Nov., 1875, and set forth in the schedule hereto,) be approved and carried into effect.

"THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

"Memorandum of agreement made the 4th day of November, 1875, between the liquidators of the above named company of the one part, and W. C. of the other part. [*The agreement is too long to be given here: it provided for the sale of the assets of the old company to an intended new company which was to pay the costs of the winding up, and to issue to the creditors of the old company debentures of the new company, bearing interest at 5 per cent. per annum, to the amount of 10s. in the pound on their allowed claims; the principal secured by the debentures to be payable five years after date. The agreement also provided that application should be made to the Court to direct a meeting of creditors under the Act of 1870.*]" Wernstill Colliery Co., Hall, V.-C., at Chambers, 2 Dec., 1875, 1911 B.

"Upon the application of J. F. P., the liquidator of the above named company, and upon hearing the solicitor for the said liquidator, and upon reading an order dated the 8th August, 1876, [*calling meeting, see infra*]. It is ordered that the scheme of compromise or arrangement, pursuant to 33 & 34 Vict. c. 104, resolved upon at the meetings of the shareholders and debenture holders of the above named company, held at the — Hotel, at —, on the 23rd day of August, 1876, and duly confirmed by the shareholders of the said company at a meeting of shareholders held on Monday, the 11th day of September, 1876, at the offices of the company situate at —, be sanctioned and carried into effect, which said resolutions are as follows, that is to say,

- "(1.) That J. T. P., the liquidator of this company be, and he is hereby authorised to sell to a new company to be formed for

Prec. III.

Prec. III.

the purpose of acquiring the same, all the property of this company, subject to the debts and liabilities thereof, in consideration of 8,000 shares of 10*l.* each in such new company, with 6*l.* per share credited as paid up thereon, such shares to be divided among the shareholders of this company in the proportion of one share in such new company for each share now held in this company.

"(2.) That the debenture holders of this company accept in satisfaction and discharge of their claims against such company perpetual debentures to the same amount respectively in a new company intended to be formed for the purpose of acquiring the assets and property of this company, bearing interest at 4*l.* 10*s.* per cent. per annum from the 30th day of March, 1876.

"(3.) *a.* That a composition of 12*s.* in the pound be accepted in satisfaction of the debts due to the creditors of this company (other than the debenture holders). *b.* And that such composition be payable by three instalments at 3, 6, and 9 months respectively from the date of the confirmation of these resolutions by the Court." *Northampton Coal, &c., Co.*, Malins, V.-C., at Chambers, 12 Sep., 1876, B. 1598.

The following are examples of orders made calling meetings :

"Upon the application of the liquidators of the above named company, and upon hearing the solicitor for the applicants, and upon reading the affidavit of J. H. E., one of the said liquidators, filed, &c., and the exhibits A. and B. therein referred to. It is ordered that a meeting of the creditors of the above named company be summoned by the said liquidators under the provisions of the above named statutes and the Joint Stock Companies Arrangement Act, 1870, for the consideration and approval or rejection by them of the arrangement proposed between the said company and its creditors embodied in an agreement dated, &c., being the said exhibit A. to the said affidavit of the said J. H. E. ; and it is ordered that the said meeting be held on, &c., at &c., at the hour of two of the clock in the afternoon, or at such other time as the said liquidators shall appoint, and that the chair shall be taken at such meeting by the said J. H. E., one of the said liquidators, who is to report the result thereof to the Court." *Wernstill Colliery Co.*, Hall, V.-C., at Chambers, 12 Nov., 1875, B. 1693.

"Upon the application of J. F. P., the liquidator of the above named company, and upon hearing the solicitors of the said liquidator, and upon reading an order dated, &c., [*supervision order*], and an affidavit, &c. It is ordered that the said liquidator be at liberty to call a meeting or meetings of the creditors and debenture holders of the said company for the purpose of considering a scheme of compromise or arrangement to be made between such creditors and debenture holders and the company, and that the said liquidator be the chairman of such meeting or meetings." *Northampton Coal, &c., Co.*, Malins, V.-C., at Chambers, 8 August, 1876, B. 1433.

WINDING-UP PETITIONS.

INTRODUCTORY NOTES.

It would not be within the scope of this work to enter at length into the law and practice relating to the winding up of companies under the Acts of 1862 and 1867, but it may be convenient to state or refer to some of the material points which must be borne in mind in preparing a winding-up petition, and to give a few precedents of petitions, and of the orders usually made thereon or in relation thereto.

By Section 81 of the Act it is provided as follows :—

“The expression ‘the Court,’ as used in this part of the Act, [i.e. Part IV., which by Section 5 of the Act is declared to relate to the winding up of companies and associations under this Act,] shall mean the following authorities; (that is to say,) Meaning of
“the Court.”

“In the case of a company engaged in working any mine within and subject to the jurisdiction of the Stannaries—the Court of the Vice-warden of the Stannaries, unless the Vice-warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery :

“In the case of a company registered in England that is not engaged in working any such mine as aforesaid, the High Court of Chancery :

“In the case of a company registered in Ireland, the Court of Chancery in Ireland :

“In all cases of companies registered in Scotland, the Court of Session, in either division thereof :

“Provided that where the Court of Chancery in England or Ireland makes an order for winding up a company under this act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon such last mentioned Court of Bankruptcy shall, for the purpose of winding up the company, be deemed to be ‘the Court’ within the meaning of the Act, and shall have for the purposes of such winding up all the powers of the High Court of Chancery, or of the Court of Chancery in Ireland, as the case may require.”

The expression “engaged in working any mine within and subject to the jurisdiction of the Stannaries” in the first paragraph of the above clause means “formed to work.” Where
Stannary
jurisdiction
exists.

East Botallach Mining Co., 34 L. J. Ch. 81 ; 34 Beav. 82 ; 13 W. R. 197.

The fact that the company has no such mine or has ceased to work it, does not oust the Stannary jurisdiction. *Ibid.*

It would seem that the Stannary Court has exclusive jurisdiction in the case of a company formed to work mines within the jurisdiction of the Stannaries, although some of the objects of the company are to be carried out beyond the district. *Penhale, &c., Co.*, 2 Ch. 398.

Petition to
High Court.

By the joint effect of Sections 16 and 34 of the Supreme Court of Judicature Act, 1873, petitions for the winding up of companies within the second paragraph of the above section must now be presented to the High Court of Justice, Chancery Division.

Reference to
County Court.

As to ordering further proceedings in the winding-up, to be taken in the County Court [See *infra*, p. 641.]

When wind-
ing-up order
will be made.

As to the circumstances under which a company may be wound up :—

By Section 79 of the Act it is provided as follows :—

“A company under this Act may be wound up by the Court as hereinafter defined,” [see *supra*, p. 493, Section 81], under the following circumstances : (that is to say,)

- (1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court.
- (2.) Whenever the company does not commence its business within one year from its incorporation, or suspends its business for the space of a whole year.
- (3.) Whenever the members are reduced in number to less than seven.
- (4.) Whenever the company is unable to pay its debts.
- (5.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.”

An order under sub-section (1.) is rarely made.

Sub-section
(2.).

With regard to sub-section (2.) the jurisdiction given by this sub-section to the Court is a discretionary one, and the circumstance that the business has not been commenced within the year does not give a member a vested right to a winding-up order. *Metropolitan Ry. Warehousing Co.*, 15 W. R. 1121. Hence where the delay is sufficiently accounted for and there appears to be a reasonable prospect that the company, if allowed to go on, will succeed, or if the great majority of the members desire to go on, an order may be refused. *In re Heaton's Steel and Iron Co.*, W. N. 1870, 85 ; *Metropolitan Ry. Warehousing Co.*, *ubi supra* ; *Petersburg, &c., Gas Co.*, W. N.,

1874, 196. But in a proper case an order may be made although the company has purchased a large property and has no debts. *Tumacacori Mining Co.*, 17 Eq. 534 ; 43 L. J. Ch. 417 ; 22 W. R. 510.

A company does not suspend business within the section because it abandons one out of several objects, unless it abandons its principal object. *Norwegian, &c., Co.*, 35 Beav. 223 ; *Patent Bread Co.*, 14 W. R. 907 ; *New Gas Co.*, W. N. 1877, 65.

With regard to sub-section (3.) : The expensive machinery of a compulsory winding up will not, where the number of members is small, be applied, unless special reasons for making an order be shown. Hence, where a petition was presented for winding up a company consisting of only seven members and not alleging the existence of debts, it was dismissed with costs. *In re Sea and River, &c., Co.*, 2 Eq. 545. Sub-section (3).

But an order may be made in a proper case though the number of members be small. *In re West Surrey Tanning Co.*, 2 Eq. 737, where an order was made although there were only 10 members. See also *Sanderson's Patent Assoc.*, 12 Eq. 188. In a recent case an order was made for the winding up of an abortive company (*Lacy & Co., Limd.*) consisting of seven members only, each holding one 1l. share. The petitioner had obtained judgment on an acceptance of the company. Hall, V.-C., 9 Mar., 1877 (W. N. 1877, 71).

With regard to sub-section 4, see *infra*, p. 597, *et seq.*

With regard to sub-section (5.), viz. : "Whenever the Court is of opinion that it is just and equitable that the company should be wound up." Sub-section (4). "Just and equitable."

It is well settled that in order to bring a case within the above words it must be of the same description as the cases pointed out in the preceding sub-sections. *In re Wear Engine Works Co.*, 10 Ch. 188 ; *In re Suburban Hotel Co.*, 2 Ch. 737 ; 15 W. R. 1096.

The mere fact that the business of a company has been carried on at a loss, and appears likely to be a losing concern, is not sufficient to authorise a winding-up order against the wish of the majority of the members. *Suburban Hotel Co., ubi supra* ; see also *Hop and Malt Co.*, W. N. 1866, 222.

The misconduct of the directors and managers of a company is not necessarily a ground on which the Court will consider it

to be "just and equitable" to make a winding-up order, where there is no evidence that the mismanagement has caused insolvency, or that the company is a mere bubble company, and where there is a reasonable prospect that, under proper management, it may be successfully carried on. *In re Anglo-Greek Steam Co.*, 2 Eq. 1.

The fact that the directors of a company have been bribed by a vendor to the company does not render a winding up just and equitable. *Bulch y Plum Co.*, 17 L. T. N. S. 235.

Nor does the fact that special resolutions have been passed authorising an act which is *ultra vires* the company entitle a member to a winding-up order. *Ex parte Fox*, 6 Ch. 176.

Nevertheless there may be cases where the Court would think it just and equitable to make a winding-up order in order to protect the rights of a minority. *In re Hester and Co.*, 44 L. J. Ch. 757; *supra*, p. 485.

Insolvency.

If a company is shown to be insolvent, a winding-up order may be made under the above sub-section. "The Court is bound to exercise that jurisdiction of winding up if it is of opinion upon hearing the whole case that it is just and equitable—not that it is prudent, but that it is just and equitable—that the company should be wound up. And in my view of the law of the case it would be just and equitable to wind up a company like this assurance company if it were made out to my satisfaction that it is, not in any technical sense, but plainly and commercially, insolvent—that is to say, that its assets are such, and its existing liabilities are such, as to make it reasonably certain—as to make the Court feel satisfied—that the existing and probable assets would be insufficient to meet the existing liabilities." *In re European Life Assurance Society*, 9 Eq. 122. See the recent case of the *Langham Skating Rink Co.*, W. N. 1877, 32, *reversed on app.*, *ibid.* p. 61. As to mode of testing solvency of life assurance company, see the Life Assurance Companies Act, 1870, 33 and 34 Vict. c. 61.

In a very large number of cases the winding-up order is made upon the ground (*inter alia*) that it is "just and equitable" because the company is insolvent. But in most of these cases the company is *also* alleged and shown to be "unable to pay its debts."

Order on
petition must
be *secundum*

In settling a petition it must be borne in mind that the petition must allege facts which justify a winding-up order.

The mere allegation that it is just and equitable that the company should be wound up is not sufficient. The facts which render it just and equitable must be stated, so that the order may be *secundum allegata et probata*. *allegata et probata.*

Hence a petition for the winding up of a company on the ground that it was a losing concern, was indebted to the petitioner and other creditors, was unable except by the sale of its assets to pay its debts, and that it was just and equitable, &c., was dismissed with costs, because there was no allegation that the petitioner had made any demand on the company for payment. *In re Wear Engine Works Co.*, 10 Ch. 191; see also *The Patent Cocoa Fibre Co.*, W. N. 1876, 60; see also Buckley, 184, *et seq.*

As to what is sufficient evidence that a company is unable to pay its debts:—

Evidence of inability to pay debts.

By Section 80 of the Act it is provided that—

“A company under the Act shall be deemed to be unable to pay its debts:

- (1.) Whenever a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding 50*l.* then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor.
- (2.) Whenever in England and Ireland, execution or other process issued on a judgment or order obtained in any Court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part.
- (3.) Whenever in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made.
- (4.) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.”

The omission of a company to comply with a notice requiring payment of a debt, served pursuant to the above Subsection (1) is not “neglect” within the meaning of that subsection, if there is reasonable cause for the omission; and a creditor who has served such a notice is not entitled to a winding-up order if the company *bona fide* dispute the debt, and there is no evidence of the insolvency of the company (other than the non-compliance with the notice), and in- Disputed debt.

solvency is denied on the part of the company. *London and Paris Banking Co.*, 19 Eq. 444. In this case there was a *bonâ fide* dispute as to the debt of the petitioner, the company was not alleged to be insolvent, and the Court was of opinion that the petition had "not been presented *bonâ fide*—that is, with a view of obtaining a winding-up order, but with the view of extorting from the company a larger sum than they thought was fairly due, under pressure of a threat to present a winding-up petition." Accordingly it was dismissed with costs, thus leaving the petitioner to bring an action for his debt.

Restraining
presentation
of petition.

A creditor of a solvent company, whose debt is disputed, will be restrained from presenting a petition for the winding up of the company. *Cadiz Waterworks Co. v. Barnett*, 19 Eq. 182. Jessel, M.R., granted a similar injunction (26th January, 1877) in *The Niger Merchants Limited v. Capper*, 1877, N. 7.

Sub-section
(1).

As to sub-section (1) :—

A creditor who has served the statutory demand, and has not been paid or secured as provided by that sub-section, is entitled to a winding-up order, but not necessarily to an immediate one. *In re Western of Canada, &c., Co.*, 17 Eq. 1.

And where there is a voluntary winding up in progress at the time when the petition of a creditor for a compulsory order comes on for hearing, he is not entitled to an order against the wish of the other creditors. *In re West Hartlepool Iron Works Co.*, 10 Ch. 618.

The number of winding-up orders made under sub-section (1) is not large.

Sub-section
(2).

As to sub-section (2) :—

Orders are from time to time made under this sub-section, and there will be found *infra*, Precedent IV., a petition in reference to a case falling within it.

Sub-section
(4).

As to sub-section (4) :—

The great majority of winding-up orders (in England) are made under this sub-section. In many such cases the inability to pay its debts is coupled with insolvency, which, under sub-section 5 of Section 79 of the Act, *supra*, p. 596, is alone sufficient to justify a winding-up order.

But a company may be solvent and yet unable to pay its debts. *In re Alliance Contract Co.*, W. N. 1867, 218. In this case the petitioner's debt was paid off after the presentation

but before the hearing of the petition. The company, however, declined to pay his costs, and the petition accordingly came on. Page-Wood, V.-C., considered that it was proved that the company was unable to pay its debts at the time of the presentation of the petition: "Of what use was it for the company to say they had assets to the amount of 20,000*l.* if they had not cash to pay a debt of 97*l.*? There would be no order, except that the company pay the costs of the petition."

So, too, where a judgment creditor was told by the solicitors of the company that there were no assets on which he could levy, it was held that this was evidence that the company was unable to pay its debts, and accordingly the company was ordered to pay the costs of a winding-up petition presented by the creditor, although he was paid off by the company before the hearing. *Re Flagstaff Mining Co.*, 20 Eq. 268.

On the other hand, a company may be insolvent and yet not unable to pay its debts; for the inability to pay its debts under the above sub-section is an inability to pay its debts actually due, for which a creditor could claim immediate payment. *In re European Life Assurance Society*, 9 Eq. 122.

As to determining whether a life assurance company is insolvent or not, see the Life Assurance Companies Act, 1870; 33 & 34 Vict. c. 61.

Where a company bought goods, giving in part payment its acceptance, which was dishonoured and continued unpaid, and the vendor presented a winding-up petition, it was held that the dishonour of the bill was proof to the satisfaction of the Court that the company was unable to pay its debts. *In re Globe, &c., Co.*, 20 Eq. 337.

Sub-section (1) has no application to sub-section (4), hence if the Court is satisfied that the company is unable to pay its debts, a winding-up order may be made, although no demand in writing pursuant to sub-section (1) has been made on the company. *In re Globe, &c., Co.*, 20 Eq. 337.

As to who may petition for the winding up of a company:—
By Section 82 of the Act it is provided that:—

Who may
petition.

"Any application to the Court for the winding up of a company under this Act shall be by petition; it may be presented by the company, or by any one or more creditor or creditors, or by any one or more contributory or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition, shall operate in favour of all the creditors

and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and contributory."

Petition of
creditor.

With regard to the petition of a creditor :—

A creditor who cannot get paid is entitled *ex debito justitiæ* to a winding-up order. *In re Western of Canada, &c., Co.*, 17 Eq. 1.

But he is not entitled to an immediate order as between himself and the other creditors, and if the majority of the creditors desire, the Court may under Section 91 [*infra*, p. 605] order the petition to stand over.

Thus, in the *Western of Canada, &c., Co.*, *ubi supra*, the petition stood over for three months, while investigations in Canada were being made. However, at the end of that period nothing appearing to have been done, a winding-up order was made. See other cases cited, *infra*, pp. 645, 649.

An equitable creditor is entitled to petition. Thus where the petitioner was the holder of debentures to bearer, which were not capable of being held promissory notes, it was contended that the petitioner could not be recognised as a creditor, but Hall, V.-C., said that "he saw no reason to doubt that the petitioner was, upon the evidence, an equitable creditor in respect of the sum due to him." *In re North-Western Railway of Montevideo Co.*, *Times*, 1st May, 1876. See also the Supreme Court of Judicature Act, 1873, s. 24; and *In re London, &c., Alkali Co.*, 1 D. F. & G. 257.

A person having a claim against a company for unliquidated damages is not entitled to a winding-up order as an unpaid creditor. *Re Pen-y-Van Colliery Co.*, W. N. 1877, 54.

Petition of
contributory.

With regard to the petition of a contributory :—

By the Companies Act, 1867, Section 40, it is provided that :—

"No contributory of a company under the principal Act (*i.e.*, the Act of 1862), shall be capable of presenting a petition for winding up such company unless the members of the company are reduced to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six calendar months during the eighteen months previously to the commencement of the winding up, or have devolved upon him through the death of a former holder.

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a con-

tributory, either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory."

It is not essential that a petition by a contributory should contain an allegation that he has held his shares for six months before the presentation of the petition. *In re City and County Bank*, 10 Ch. 470.

Where a winding-up petition by a contributory stated that a call had been made upon the petitioner, which he had not yet paid, it was held that the petition was unsustainable on the face of it, and accordingly was dismissed with costs. *In re Steam Stoker Co.*, 19 Eq. 416. See also *In re European Life Assurance Society*, 10 Eq. 403.

A holder of paid-up shares is a contributory within Sections 74 and 82 of the Act, and accordingly is entitled to present a winding-up petition. But his interest is generally very remote. If the company is solvent it consists merely in the right to share in the surplus assets if any. If the company is insolvent he has practically no interest. *Lancashire Brick, &c., Co.*, 13 W. R. 569.

In either case the Court will generally give effect to the wishes of the other contributories, and for that purpose if necessary call a meeting. *Patent Artificial Stone Co.*, 34 Beav. 185; 13 W. R. 285; *Lancashire Brick, &c., Co.*, 13 W. R. 569; *New Zealand Quartz Co.*, W. N. 1873, 174. See also *infra*, p. 605.

Where two petitions were presented for a winding-up order, one by a paid-up shareholder, the other by a shareholder who had only paid the deposit on application, an order was made on both petitions, but the conduct of the winding up was given to the paid-up shareholder. *In re Constantinople, &c., Hotels Co.*, 13 W. R. 851.

As to the right of a petitioner to withdraw his petition: See *infra*, p. 646, Order 26.

As to priority *inter se* of concurrent petitions: See *infra*, p. 607.

As to the title of the petition, it is provided by Rule 1 of the General Order of March, 1868, that:—

Title of
petition, &c.

"Every petition which shall, after this order comes into operation, be presented for the winding up a company by the Court, or subject to

the supervision of the Court, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of the Companies Acts, 1862 and 1867, and of the company to which such petition shall relate, describing the company by its most usual style or firm."

Advertising. As to advertising winding-up petition, it is provided by Rule 2 of the General Order of November, 1862, as follows :—

"Every such petition shall be advertised seven clear days before the hearing, as follows :—

- (1.) In the case of a company whose registered office, or last known place of business, is or was situate within ten miles from Lincoln's Inn Hall, once in the *London Gazette*, and once at least in two London daily morning newspapers.
- (2.) In the case of any other company, once in the *London Gazette*, and once at least in two local newspapers circulating in the district where such registered office, or principal or last known place of business, as the case may be, of such company is or was situate.

"The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any)."

Where a winding-up petition had been duly intituled in the matter of the Companies Acts, 1862 and 1867, but the words "and 1867" had been omitted in the advertisement, the petition was ordered to stand over with liberty to issue fresh advertisements. *Marezzo Marble Co.*, W. N. 1874, 9 ; 22 W. R. 248 ; 43 L. J. Ch. 544.

And where in the advertisement of a petition to wind up "The City and County Bank, Limited," the name of the company was given as "The City and County Banking Company, Limited," the Lords Justices were of opinion that although it might appear to be a slight error it rendered the advertisements in which it appeared absolutely void. *In re City and County Bank*, 10 Ch. 477.

But where a petition for winding up the Consolidated Minera Co. was advertised in two newspapers on the 13th July, and in one the word "Minera" had been by mistake printed "Mineral" and in the other "Minerva" a winding-up order was made of the 21st July, the mistakes having been corrected on the 14th July. W. N. 1876, 234.

Power to dispense with

By Rule 53 of the General Order, November, 1862, "The judge may, in such cases as he shall think fit, dispense with

any advertisement required by these rules." Accordingly, where the advertisement of a winding-up petition had not been inserted in the *Gazette* seven clear days before the day for which the petition was answered, Malins, V.-C., in exercise of the power given by the above rule, heard the petition. *In re Land and Sea Telegraph Co.*, 18 W. R. 1150 ; W. N. 1870, 212. See also *In re Worthing Royal Sea House Hotel Co.*, W. N. 1872, 74, where an order was made although the advertisements were not quite regular.

advertisement.

In the case of the London and Westminster Wine Company, 12 W. R. 44, it being objected that the advertisements had not been inserted seven clear days before the hearing, the petition was ordered to stand over till the next day of unopposed petitions.

In re London Indiarubber Co., 14 W. R. 527, 594, after the hearing of a winding-up petition it was discovered that the petition had been advertised in only one newspaper besides the *Gazette* : the Lord Chancellor declined to relax the rule, and said that the petition must be duly advertised, and that the order for winding up might be drawn up seven days after the advertisement.

On motion to discharge (on the ground of irregularity in the voluntary winding up) supervision order made upon a petition by creditors for a compulsory winding up, the order was discharged and the petition reheard without fresh advertisement, on service and consent of all parties entitled to be served. *In re Patent Floor Cloth Co.*, 8 Eq. 664 ; 21 L. T. N. S. 199.

The usual course, where the petition has not been duly advertised and the court is not disposed to exercise the power given by Rule 53, is to let it stand over for a fortnight with liberty to insert fresh advertisements.

As to standing over to advertise duly.

The advertisement is of importance in reference to Section 153 of the Act, for although by that section all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members between the commencement of the winding up (*i.e.*, the presentation of the petition, Section 84) and the order to wind up are void, yet under the same section the court has power to confirm them, and will exercise this power where dealings have taken place and transfers been made without notice of the

Effect of advertisement.

presentation of a winding-up petition and before the advertisement thereof. *Emmerson's Case*, 1 Ch. 433.

In the above case it was laid down by Lord Romilly, M.R., that the first appearance of the advertisement determines *ipso facto* the position of all the parties, and that it must be treated as notice to all the world. *Emmerson's Case*, 2 Eq. 233. See *infra*, p. 640, as to costs of second petition presented after advertisement of another.

Service of
petition.

As to the service of the petition :—

By the General Order of 1862, Rule 3, it is provided that :—

“Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct ; and every petition for the winding up of a company, subject to the supervision of the Court, shall also be served upon the liquidator (if any,) appointed for the purpose of winding up the affairs of the company.”

Where the premises which had been occupied as an office by the company had been shut up and vacated a few days before the presentation of a winding-up petition, service upon the solicitor of the company and upon some one or more of the directors was ordered. *Re the London and Westminster Co.*, 12 W. R. 6.

In *In re the National Credit, &c., Co.*, 11 W. R. 161 ; 7 L. T. 817, service on the chairman and general manager was directed, there being a registered office which was closed and no one there to serve.

In another case where the company had ceased to carry on business and had no office, service was ordered on the nine surviving subscribers of the memorandum (who had acted as directors) as well as three or four of the principal members. *Re Inventors' Association*, 13 W. R. 1015.

And in the *Petroleum Co.*, 15 W. R. 29, there being no registered office, service on the company was ordered to be effected by serving the petition on the late secretary.

Where the registered place of business of a company had been demolished, service on directors at the present place of

business, though not registered, was held sufficient. *Fortune Copper Co.*, 10 Eq. 390 ; 22 L. T. 650.

Where a petition was presented to wind up a company which had transferred its business and been dissolved eight years previously, it was held that the petition ought to be served upon some of the members, officers, or servants of the company, and that service at the place where the company had formerly carried on business was not sufficient. *In re Manchester, &c., Co.*, 9 Eq. 644.

It has been held that, where a petition for a winding up subject to supervision is presented, the company as well as the liquidators ought to be served. *Inventors' Association*, 13 W. R. 1015 ; *Panonia Leather Cloth Co.*, *Ibid.* ; *Petroleum Co.*, 15 W. R. 29 ; and it would seem that the liquidator ought to be served where the petition is for a compulsory order.

Service in case of petition for supervision order.

Wishes of creditors and contributories to be regarded :—
By Section 91 of the Act :—

Wishes of creditors and contributories.

"The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a chairman to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company."

The power given to the Court by the above section is exerciseable as well before as after a winding-up order. *In re Western of Canada Oil, Lands, and Works Co.*, 17 Eq. 1. And in determining what order shall be made on a winding-up petition the Court is frequently influenced by the wishes of the creditors and contributories, and sufficient evidence of the wishes of the creditors may be afforded without any meeting having been called, *e.g.*, if the majority are represented by counsel at the hearing. *In re West Hartlepool Iron Works Co.*, 10 Ch. 618.

Thus in the *Brighton Hotel Co.*, 6 Eq. 339, a winding-up petition had been presented by a creditor. It appeared from the affidavit of three opposing shareholders that arrangements would probably be made for the payment of the debts, and the

petition was, under the circumstances, ordered to stand over for a month, and a meeting of the members to be called.

For other cases in which creditors' petition ordered to stand over, see *Western of Canada &c., Oil Co.*, 17 Eq 1; *In re St. Thomas' Dock Co.*, 2 Ch. Div. 116.

In the *Langley Mill Steel, &c., Co.*, 12 Eq. 26, the majority of the creditors and shareholders being in favour of a voluntary winding up, a resolution for which had been passed after the presentation but before the hearing of a creditors' petition for a compulsory order, the petition was dismissed. See also a similar case, *In re Belfast Tramways Co.*, W. N., 1872, 5, 40.

A petition having been presented for the winding up of the Emma Mining Co., the Judge ordered a meeting to be called of the members. The following is a copy of the advertisement :—

In Chancery.—In the matter of the Companies Acts, 1862 and 1867, And in the matter The Emma Mining Company, Limited. Notice is hereby given, that the Vice-Chancellor Sir Richard Malins has directed a meeting of the members or shareholders of the above-named company (as appearing by the register of members as of the 24th day of March, 1875), to be summoned pursuant to the above statutes, for the purpose of ascertaining their wishes as to certain matters relating to the winding up of the said company; and that such meeting will be held on Friday, the 7th day of May, 1875, at two o'clock in the afternoon, at the Terminus Hotel, Cannon Street, in the City of London, at which time and place all the aforesaid members or shareholders of the said company, but none others, are requested to attend. The said judge has appointed F. W. (of the firm of H., W., & Company), of No. —, Old Jewry, in the City of London, public accountant, to act as chairman of such meeting. Dated this 21st day of April, 1875.

—, Secretary of the said company,
17, Queen Victoria Street,
London, E.C.

The following resolutions have been suggested by his Honor the Vice-Chancellor as embodying the points upon which he desires to be informed of the wishes of the above members or shareholders :—1. "That it is the opinion of this meeting that the operations of the company can be carried on with a reasonable prospect of success, and that the Vice-Chancellor, Sir Richard Malins, be requested not to make any order for the winding up of the company." If such motion be negatived, the following to be moved as a substantive resolution :—2. "That it is the opinion of this meeting that this company be wound up compulsorily by the Court of Chancery, under the petition of Mr. Askew, now pending."

Resolution (1) was passed and the petition was dismissed, but without costs. See Order XXII., *infra*, p. 644.

Sometimes a petition having been presented for the winding up of a company, the directors call a meeting before the hearing for the purpose of obtaining an expression of the views of the members and creditors. This was done in the case of the *General South American Co., Ltd.* [see *supra*, p. 405] and the following resolution was passed :—

"That in the opinion of this meeting and having regard to the nature and situation of the property and assets of the company, a compulsory winding up of the company by the Court of Chancery would be attended with the most disastrous consequences and loss to the creditors and members of the company, in whose interest it is most important and necessary that the company should be allowed as far as possible to wind up voluntarily, with a representative of the creditors as one of the liquidators, and that the directors be, and they are hereby authorised and required for and on behalf and in the name of the company to oppose any order for a compulsory winding up by the Court on the pending petition to the Court, and to take all such steps as they may be advised or consider expedient for the purpose of carrying out and giving effect to the resolutions of the meeting and securing the continuance of the voluntary winding up either conditionally or under the supervision of the Court as may be most expedient."

A supervision order was eventually made.

In the following cases compulsory orders were made against the wish of the majority of the shareholders. *West Surrey Tanning Co.*, 2 Eq. 737; *Great Northern Copper Mining Co.*, 17 W. R. 462; *Tumacacori Mining Co.*, 17 Eq. 534. See further, Buckley, 217, and *infra*, p. 649.

As to concurrent petitions :—Where two or more petitions are presented for winding up a company, they will have priority according to their dates of advertisement, not of presentation. *The United Ports and General Insurance Co.*, 39 L. J. Ch. 146.

Concurrent
petitions.

But where one order was made on three petitions, the carriage of the order was given to a petitioner whose petition had been presented though not advertised before one of the others. *London and Australian Agency Co.*, 29 L. T. 417; 22 W. R. 45. See also *infra*, p. 650.

As to when petitioner must give security for costs :—A petitioner residing out of the jurisdiction may be required to give security for costs. *In re Home Assurance Association*, 12 Eq. 112. Not so a shareholder residing out of the jurisdiction and opposing a winding-up order. *In re Percy, &c., Co.*, 2 Ch. Div. 531. The application for security ought to be made

Security for
costs.

at chambers. *Vale v. Oppert*, 22 W. R. 629 ; 30 L. T. N. S. 457. See further, Morgan's Chancery Acts, 603, and Seton on Decrees, Vol. I., 125.

Orders when
voluntary
winding up in
progress.

As to compulsory order where voluntary winding up has been commenced :—By Section 145 of the Act it is provided that : “The voluntary winding up of a company shall not be a bar to the right of a creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.”

Where at the time of the presentation of a winding-up petition the company is being wound up voluntarily, the Court will not make a compulsory order in the absence of special circumstances. *London and Provincial Starch Co.*, W. N. 1867, 172.

A creditor petitioning for a compulsory order must allege and show that his rights will be prejudiced by the voluntary winding up, otherwise his petition will be dismissed. *Universal Drug Supply Association*, W. N., 1874, 125 ; 22 W. R. 675.

But the Court will be influenced by the wishes of the creditors and contributories in accordance with Sections 91 and 149. See *supra*, p. 605, *et seq.*, and Buckley, 277, *et seq.*

As to a supervision order, see *infra*, p. 648, notes to Order 29.

As to the appointment of provisional official liquidators, see *infra*, p. 627.

As to transfer of petition, see *infra*, p. 637.

As to staying actions, &c., after presentation of petition, see *infra*, p. 630, *et seq.*

As to the winding up of unregistered associations, see Buckley, p. 359, *et seq.*

As to withdrawing petition, see *infra*, p. 646, 193, Buckley.

As to costs, see *infra*, p. 639, *et seq.*

As to the provisions of 33 & 34 Vict. c. 61, in regard to the winding up of life assurance companies, see *infra*, p. 613.

Official liqui-
dator.

As to appointment of an official liquidator :—

By Section 92 of the Act, it is provided that :

“For the purpose of conducting the proceedings in winding-up a company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators ; and the Court having jurisdiction may appoint such person or persons,

either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all, or any one, or more of such persons. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

The judge may appoint a person to the office of official liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated. Gen. Ord. 1862, Rule 8.

An official liquidator may be appointed at the hearing: *London, Bombay, and Mediterranean Bank*, 1 Ch. 525; but this is not often done, and in any case he will not be so appointed except by consent: *Commercial Discount Co.*, 32 Beav. 198; 11 W. R. 353. In the case of *The Imperial Decorative Co.*, an official liquidator was appointed, by Bacon, V.-C. (6 Nov., 1876, A. 1692), at the hearing of the petition. A similar order was made by the Master of the Rolls in *The Sharrow Rolling Mill Co.*, 5 Aug., 1876, B. 1471. See further, Buckley, 219, 499.

As to staying further proceedings in a winding up with a view to the resumption of business, see *infra*, p. 618.

WINDING-UP PETITIONS.

PRECEDENT IV.

Prec. IV.

PETITION OF JUDGMENT CREDITOR.

In the High Court of Justice.

Chancery Division.

Vice-Chancellor ——. [Or Master of the Rolls.]

In the matter of the Companies Acts, 1862 and 1867.

See *supra*, p. 601.

And in the matter of The — Company, Limited.

To Her Majesty's High Court of Justice.

See *supra*, p. 594.

The humble petition of —, of —, sheweth as follows :—

Incorporation.

1. The — Company, Limited (hereinafter called the company), was in the month of —, 1872, incorporated under the Companies Acts, 1862 and 1867, as a company limited by shares.

Office.

2. The registered office of the company is at —.

Objects.

3. The objects for which the company was established are as follows :—

(a) To, &c.

Here the objects will be set out. In some cases only the leading objects of the company are stated ; and in such cases the paragraph will conclude thus : "and for other objects set forth in the memorandum of association of the company."

4. The nominal capital of the company is 20,000*l.*, divided into 2,000 shares of 10*l.* each. The whole of the said shares have been issued.

5. Your petitioner is the holder for valuable consideration of a bill of exchange, dated the — day of —, for 250*l.*, payable six months after date, drawn by — upon and

accepted by the company and indorsed by divers persons. **Proc. IV.**
The said bill was not met at maturity.

6. On or about the — day of —, your petitioner duly commenced and prosecuted an action in the Common Pleas Division of the High Court of Justice against the company for the recovery of the amount of the said bill and interest, in accordance with The Summary Procedure on Bills of Exchange Act, 1855. **Action on bill.**

7. The company failed to appear to the writ in the said action, and your petitioner on the — day of —, signed and recovered judgment in the said action against the company for the sum of 251*l.* 5*s.* and costs, which costs were afterwards taxed and certified to amount to 4*l.* 6*s.*, making together with the said sum of 251*l.* 5*s.* the sum of 255*l.* 11*s.*, recovered by the said judgment. **Judgment.**

8. Your petitioner on the — day of — sued out a writ of *fiery facias* under the said judgment; but on the — day of — the sheriff of the county of —, to whom the said writ was directed, returned the same wholly unsatisfied, the company having no goods or chattels within his bailiwick, upon which execution could be levied. **Execution issued but unsatisfied.**

See *supra*, p. 597, Section 80, Subsection (2).

9. The said judgment is wholly unpaid and unsatisfied, and the amount thereof is justly due and owing to your petitioner.

10. The company is unable to pay its debts.

See *supra*, p. 597.

11. Under the circumstances it is just and equitable [*supra*, p. 594] that the company should be wound up.

Your petitioner therefore humbly prays as follows:—

1. That the — Company, Limited, may be wound up by the Court under the provisions of the Companies Acts, 1862 and 1867, and that for that purpose all necessary and proper directions may be given; or,
2. That your petitioner may have such further or other order as to the Court shall seem meet.

And your petitioner will ever pray, &c.

NOTE.—It is intended to serve this petition on The — Company, Limited.

Prec. V.**PRECEDENT V.****PETITION OF EXECUTRIX OF POLICY HOLDER.**

In the High Court of Justice.

Chancery Division.

Master of the Rolls.

In the matter of the Companies Acts, 1862 and 1867.

See *supra*, p. 601.

And in the matter of the — Company, Limited.

To Her Majesty's High Court of Justice.

See *supra*, p. 594.

The humble petition of —, of —, in the county of —, widow :

Showeth as follows :—

1. Your petitioner is the widow and executrix of A. B., late of N—, in the county of —, who died on the — day of —, 1875. Your petitioner has proved his will.

Incorporation.
Objects.
Office.

2. The above named company (hereinafter called the company) was incorporated under the Companies Act, 1862, as a company limited by shares, for the purpose of carrying on the business of a life assurance company. Its registered office is in London.

Policy
effected.

3. On the 28th day of May, 1873, the said A. B. effected a policy of assurance on his own life with the company for the sum of 400*l.* at the annual premium of 13*l.* 2*s.*, which was regularly paid. It is provided by the said policy that the funds and property of the company shall be liable to pay the said sum of 400*l.* to the assured within three calendar months after satisfactory proof shall have been given to the directors of the company of his death and identity.

Death of
assured.
Notice to
office.

4. Notice of the death of the said A. B. having been given to the company the directors thereof made such inquiries as they thought fit, and satisfactory proof was given to them of such death and of the identity of the said A. B. On the 8th day of January, 1876, the secretary of the company, by the instructions of the directors thereof, wrote and sent to your petitioner's solicitor a letter of that date, informing him that the inquiries were finished, and that the 400*l.* would be paid

in accordance with the terms of the policy within three months from that date.

5. Your petitioner was desirous that the said sum of 400*l.* should be paid to Mr. D——, the London agent of her solicitor on her behalf, and inquiry was therefore made at the office of the company on what conditions the payment would be so made. The answer given on behalf of the company was that upon production of a receipt for the 400*l.*, signed by your petitioner, and of her authority in writing for the payment to Mr. D——, the money would be paid.

Prec. V.

How payment
desired by
petitioner to
be made..

6. On the —— day of ——, 1876, Mr. D—— attended at the office of the company and produced a proper receipt for the 400*l.* signed by your petitioner, and also a sufficient authority in writing signed by her for the payment of the money to Mr. D——, who demanded payment to him accordingly. The money was not, however, paid, nor was any assurance given that it would be paid. The manager of the company stated to Mr. D—— that he would bring the claim to the attention of the board of directors at their meeting on the —— day of —— and that it would then be decided, when a cheque for the 400*l.* would be paid.

Application
for payment.

Default.

7. The company has for some time past been in embarrassed circumstances, and it is unable to pay its debts.

See *supra*, p. 597.

8. Your petitioner submits that she is entitled to a winding-up order.

Your petitioner therefore humbly prays :—

1. That [*supra*, p. 611.]

NOTE.—It is intended [*supra*, p. 611.]

It may here be mentioned that by Section 21 of the Life Assurance Companies Act, 1870, 33 & 34 Vict. c. 61, it is provided as follows :—

“The Court may order the winding up of any company [*i.e.*, life assurance company, see *supra*, p. 567,] on the application of one or more policy holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent ; and in determining whether or not the company is insolvent the Court shall take into account its contingent or prospective liability under policies and annuity and other existing contracts ; but the Court shall not give a hearing to the petition until security for costs for such amount as the judge shall think reasonable shall be given, and until a *prima facie* case shall also be established to the satisfaction of the judge ; and in the case of a

Proc. V. proprietary company, having an uncalled capital of an amount sufficient, with the future premiums receivable by the company, to make up the actual invested assets equal to the amount of the invested liabilities, the Court shall suspend further proceedings on the petition for a reasonable time (in the discretion of the Court,) to enable the uncalled capital, or a sufficient part thereof, to be called up; and if at the end of the original or any extended time for which the proceedings shall have been suspended, such an amount shall not have been realised by means of calls as, with the already invested assets, to be equal to the liabilities, an order shall be made on the petition as if the company had been proved insolvent." See further, *supra*, p. 567, and Buckley, 607 *et seq.*

As to the winding up of absorbed life assurance companies in connection with the winding up of the absorbing company, see Section 4 of the Life Assurance Companies Act, 1872; Buckley, 629.

PRECEDENT VI.

Proc. VI.

PETITION OF DEBENTURE HOLDER.

In [*supra*, p. 601.]

In the matter of the Companies Acts, 1862 and 1867.

See *supra*, p. 601.

And in the matter of the — Company, Limited.

To Her Majesty's High Court of Justice.

The humble petition of —, of —,

Showeth as follows :—

Incorporation. 1. The — Company, Limited, hereinafter called the company, was incorporated, as a company limited by shares, under the Companies Acts, 1862 and 1867, in the month of —, 1873, for the purpose of acquiring and working certain patents for the manufacture of — from —, and for other purposes set forth in the memorandum of association thereof. The registered office of the company is situate at —.

Capital. 2. The nominal capital of the company was stated in the memorandum of association thereof to be 100,000*l.*, divided into 10,000 shares of 10*l.* each.

Shares issued. 3. Shortly after the incorporation thereof, the company commenced and has since carried on business. Upwards of 4,700 of its shares have been issued.

Money borrowed on debentures. 4. The company has raised money by the issue of debentures. By such debentures the company promised to pay the sums therein respectively mentioned on the — day of —,

and interest thereon in the meantime at the rate of 7 per cent. Prec. VI.
per annum, on presentation of the coupons attached thereto
on the days named in such coupons respectively, and the com-
pany thereby charged all its property with the payment of the
said principal sums and interest.

Where a debenture holder petitions, the power under the regulations of
the company to issue the debentures is generally shown.

5. The coupons attached to the said debentures were for Coupons for
interest on the principal sums in the debentures mentioned, at interest.
the rate aforesaid, and purport to be payable on the 5th April
and 5th October in every year.

6. Your petitioner advanced 2,000*l.* to the company on the Petitioner a
security of 20 such debentures as aforesaid, and these debentures are still held by him. creditor.

7. On the — day of — last your petitioner applied to Interest not
the company for payment of the interest which accrued due on paid.
your petitioner's said debentures on the 5th day of April, 1876.
The company has not paid such interest, and there now remains
due and owing to your petitioner in respect thereof the sum
of 74*l.* 0*s.* 5*d.*

8. The company is indebted to other debenture holders in Other
respect of the interest on debentures issued by it, and also to creditors.
divers other persons, and it is unable to pay its debts.

9. Some of the assets of the company are pledged by way of Assets insuf-
security, to certain creditors thereof, and the entire assets ficient.
are insufficient to meet the liabilities.

10. Several actions, brought by creditors against the com- Actions.
pany, are now pending, and unless such actions are restrained
the company will shortly be liable to have judgment entered
and execution issued against it.

11. Having regard to all the circumstances, it is just and
equitable that the company should be wound up by the Court.

12. It is important and in the interest of the creditors and Appointment
members of the company that the property thereof, and in of provisional
particular certain barrels of —, should be taken possession liquidator
of by some person appointed by the Court. expedient.

Your petitioner therefore humbly prays :—

1. That the — Company, Limited, may be wound up by
the Court, and that in the meantime and until an official
liquidator be appointed, a provisional liquidator be

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- appointed,* and that for the purposes aforesaid all necessary and proper directions may be given; or,
 2. That your petitioner may have such further or other order as to the Court shall seem meet.

And your petitioner, &c.

NOTE.—It is [*supra*, p. 610.]

* Although not necessary, it is very common, where it is desired that a provisional liquidator should be appointed, to allege the expediency in and pray for an appointment by the petition. See further, *infra*, p. 627.

PRECEDENT VII.**Prec. VII.****PETITION OF SIMPLE CONTRACT CREDITOR.**

In [*supra*, p. 610].

In the matter of The — Company, Limited.

And in the matter of the Companies Acts, 1862 and 1867.

To [*supra*, p. .]

The humble petition of — of —.

Showeth as follows :—

Incorporation.

1. The above-named company (hereinafter called the company) was registered with articles of association on the — day of —, under the above-mentioned Acts.

Office.

2. The registered office, &c.

Object.

3. The objects for which the company was established as stated in the memorandum of association thereof are as follows :—

&c.

&c.

Petitioner's debt.

4. Between the — day of — and — day of —, your petitioner supplied timber and other building materials to the company to the amount of 230*l.* 12*s.* 6*d.* Accounts and invoices of the goods so supplied were from time to time furnished to the company, and payments on account were made by it to the petitioner.

Amount due.

5. There now remains due and owing from the company to the petitioner a sum of 73*l.* 18*s.*, being the balance of the said sum of 230*l.* 12*s.* 6*d.*

6. The petitioner has made repeated and urgent applications to the company for payment of the said sum due to him, but the company has neglected to pay or satisfy the same. The company does not dispute the fact that the said sum is due to your petitioner.

Prec. VII.

Applications for payment.

See *supra*, p. 597.

7. The business of the company has been carried on for several years past at a loss, and the loss in respect thereof during the year ending on the 10th day of November, 18—, was, as your petitioner has ascertained, the sum of 3,722*l.* 8*s.* 9*d.*

Losses of company.

8. Acceptances of the company to a considerable amount will shortly arrive at maturity, and the company has no means of providing for the payment thereof.

Acceptances falling due.

9. The company is indebted to general and unsecured creditors in respect of goods supplied and materials delivered, and on other accounts to an amount including the said acceptances of 4,781*l.* 7*s.* 2*d.*

Debts of company.

10. The company has raised the sum of 7,000*l.* upon mortgages of part of its property, and has issued mortgage debentures charging its undertaking and assets (subject to the said mortgage) to the amount of 2,700*l.* or thereabouts.

Mortgage debentures issued.

11. In addition to a considerable number of shares issued as fully paid up to the promoters of the company as the consideration for services rendered, or alleged to have been rendered, by them to the company, about 3,700 shares have been issued to the public, and the full amount of 5*l.* per share has been called up thereon. Calls to the amount of £— remain unpaid on divers of the said shares.

Shares issued.

12. The company is unable to pay its debts, and the assets thereof are insufficient to provide for and satisfy all its debts and liabilities.

Company cannot pay its debts.

See *supra*, p. 597.

13. It is necessary for the protection of the property of the company, and for the interest of the creditors thereof, that a provisional official liquidator should be immediately appointed.

Provisional liquidator necessary.

Your petitioner therefore, &c.

PRECEDENT VIII.

PREC. VIII. PETITION TO COURT TO STAY PROCEEDINGS IN A WINDING UP (a).

In Chancery.

Lord Chancellor.

Vice-Chancellor James.

} *This petition was presented
under the old practice,
August, 1869.*

In the matter of the Companies Acts, 1862 and
1867.

And in the matter of the South Barrule Slate Quarry
Company, Limited.

To the Right Honourable The Lord High Chancellor of
Great Britain.

The humble petition of C. E. W., of —, chairman of
the directors, and a contributory of the above-named
company.

Showeth :—

Formation of
company.

1. That the above-named company was duly formed and
registered as a company limited by shares pursuant to the
Companies Act, 1862.

Office.
Objects.

2. That by the memorandum of association of the said com-
pany, which has been duly registered, it was declared that the
registered office of the company was to be in England, and
that the objects for which the said company was to be esta-
blished were the purchasing and working of quarries and beds

(a) By Section 89 of the Act it is provided as follows :

"The Court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit."

The power given by this section has been exercised in a considerable number of cases.

In the *South Barrule Slate Quarry Company*, 8 Eq. 688, a supervision order had been made and all the debts having been paid, and there being a balance in the liquidator's hands sufficient to meet arrears of current expenses, the great majority of the members were desirous that an arrangement should be sanctioned for the resumption of business by the company, and that the winding up should be stayed. A petition, of which a copy is given above, was thereupon presented to the Court praying for an order to stay further proceedings. It was opposed by one shareholder only, and under the circumstances, James, V.-C., made

of slate and stone, and the preparing and selling off the produce therefrom, and the doing of all such other things as were or might be incidental or conducive to the attainment of the above objects, or any of them. And it was by the said memorandum further declared that the nominal capital of the company was 200,000*l.* divided into 80,000 shares of 2*l.* 10*s.* each. Prec.VIII.

3. That no articles of association of the said company have ever been registered. No articles.

4. That of the above-mentioned number of 80,000 shares 20,000 and no more have been actually issued, and of these What shares issued.

the order prayed for. "I do not think," (said the V.-C.) "I can allow one man to stand in the way of the wishes of all his fellow shareholders; and I do not think Mr. Moffat is justified in resisting the present application. But I will allow him an opportunity, if he likes, of retiring from the company, upon being paid the value of his present interest. There will be an order as prayed; and Mr. Moffat is to have fourteen days from this date within which to elect whether he will remain a member of the company, or will retire and give up his shares. If he elects to retire, there will be a reference to chambers to inquire the value of his interest in the slate quarry; such value to be paid to him by the petitioner. The costs of the inquiry will be reserved." For the order made, see *Pemberton on Judgments*, 1st Ed., p. 671.

See also *In re The Western of Canada Oil, &c., Co.*, W. N. 1874, 148, where an arrangement with the creditors of the company was sanctioned and a qualified order staying proceedings made.

See, too, *In re Bristol Victoria Pottery Co.*, W. N. 1872, 85.

Section 89 only applies to a winding up by, or subject to the supervision of, the Court, but by the joint effect of Section 138 and that section, an order staying proceedings may be made in a voluntary winding up.

Section 138 is as follows :

"Where a company is being wound up voluntarily, the liquidators or any contributory of the company may apply to the Court in England, Ireland, or Scotland, or to the Lord Ordinary on the Bills in Scotland in time of vacation, to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court or Lord Ordinary, in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order, interlocutor, or decree on such application as the Court thinks just."

The power to stay proceedings in a voluntary winding up was exercised by Hall, V.-C., in the case of *The Bog Mining Co., Limited*, Law Journal, Notes of Cases, 1875, 48; and by Malins, V.-C., in the case of *The Woollen Trade Association, Limited*, 12 Nov., 1875.

Prec.VIII. 8,200 have been issued as fully paid-up shares, and 11,800 as ordinary shares.

Petitioner a contributory.

5. That your petitioner C. E. W. is the chairman of the board of directors of the said company, and has been settled upon the list of contributories of the said company as being, and he is the registered holder of 100 ordinary shares, upon each of which there has been paid the sum of 2*l.*, and there still remains the sum of 10*s.* per share to be called up.

Resolutions to wind up and appointing liquidators.

6. That in accordance with notice for that purpose duly given, an extraordinary general meeting of the said company was duly held at the Inns of Court Hotel, Holborn, London, upon the 1st day of February, 1869, when two several extraordinary resolutions of the intention to propose which notice had been previously duly given, were passed by the unanimous vote of all the shareholders then present at the meeting, with the exception of the chairman at such meeting, who declined to vote upon the question, and such two last-mentioned extraordinary resolutions were in the following terms :—

1. "That it having been proved to the satisfaction of this meeting that this company cannot by reason of its liabilities, continue its business, it is desirable to wind up the said company, and that accordingly the said company be wound up voluntarily under the provisions in that behalf in the Companies Acts, 1862 and 1867, and that liquidators be forthwith appointed, the powers of the directors being reserved and continued for the next resolution hereunder."
2. "That the said liquidators, or the directors, shall be at liberty, if they see fit, at any time to present a petition to the Court of Chancery for an order of the said Court for continuing the voluntary winding up subject to the supervision of the said Court, so as to have the assistance and direction of the Court from time to time."

And by another extraordinary resolution of the said extraordinary general meeting, C. R. J. and F. J. W., were duly appointed the liquidators for winding up the said company, and they accepted such appointment.

Supervision order.

7. That by an order of this Honorable Court, made in the above-mentioned matters, on the 23rd day of February, 1869, upon the petition of the said liquidators, it was ordered that

the voluntary winding up of the said company should be continued, but subject to the supervision of this Honorable Court. **Prec.VIII.**

8. That pursuant to the said hereinbefore stated order, the said voluntary winding up has been carried on subject to the supervision of the said Court, and a list of contributories has been duly settled by the said liquidators, and advertisements for creditors to come in and prove their debts on or before the 22nd day of March, 1869, were pursuant to the rules and regulations of this Honorable Court in that behalf, duly published by the said liquidators in the *London Gazette*, and two daily local newspapers in England and in the like number of newspapers in the Isle of Man. **List of contributories settled.**

9. That the said liquidators have paid or discharged all the debts of the said company, which have been established in the said winding up, and they have also paid all the costs and expenses of the said liquidation up to the time of the presentation of this petition, and the only liabilities now known to exist with regard to the said company are current rent and royalty for the quarry after the rate of 51*l.* per annum from the said 5th of April last, and rent of office and wages for the secretary, agent, and quarrymen since the 1st day of July, 1869, all which liabilities together only amount to a few pounds, and can be more than defrayed by the balance of cash now remaining in the hands or power of the said liquidator, which amounts to 130*l.* or thereabouts. **Debts paid.**

10. That by two several orders of this Honorable Court made at Chambers in the above-mentioned matters, and dated respectively the 24th day of March and the 16th day of June, 1869, compromises with divers of the contributories of the said company have been sanctioned, whereby upon their making the payments and doing the acts therein respectively mentioned, they were allowed to retire from the company and were, in manner therein mentioned, relieved from all past, present, and future liability in respect of their shares, as in the said several orders more particularly mentioned, and in accordance with the terms of the said offers of compromise all the several contributories specified or referred to therein have made the several payments and done the several acts thereby respectively required to be made and done by them respectively, and have thereby been set free from further liability in respect of their shares in the said undertaking. **Compromises sanctioned.**

Prec.VIII.

Who are contributories.

11. That at the present time, irrespective of certain fully paid-up shares, which, pursuant to the terms of the said orders sanctioning compromises, have been transferred to and are now held by your petitioner as a trustee for the company, the capital of the company held by the contributories consists of 2,250 shares treated as fully paid up and 1,165 shares upon which only the sum of 2*l*. per share has been called and which are still liable to a further call of 10*s*. per share, and these shares are distributed amongst and held by 18 contributories, being the entire number of the contributories now existing in the said company.

Notice to contributories to consider position.

12. That on the 2nd day of July, 1869, the liquidators caused a notice in writing of that date to be sent round to all the then contributories in the said company, which, omitting formal parts, was in the words and figures following: "An extraordinary general meeting of this company is hereby summoned for Monday, July 12th, at the Inns of Court Hotel, Holborn, London, at 5 o'clock p.m., to hear the liquidator's report as to the present position of the company, and to consider and resolve whether the liquidation shall be completed or determined, and, in the latter case, to decide upon the steps to be taken to obtain the sanction of the Court of Chancery. The attendance of all the shareholders, either in person or by proxy, is particularly requested."

Resolutions passed at meeting.

13. That the said meeting was accordingly held at the time and place appointed by the said notice, when, after a report by the liquidators of what had been done by them in the liquidation, and a full statement of their accounts, and of which an outline in writing had some days previously been sent round to all the contributories, had been read, the following resolutions were passed:—

"1st. That the accounts now presented by the liquidators, showing the manner in which the winding up has been conducted, and the property of the company dealt with up this date, be received and adopted.

"2nd. That this meeting is of opinion that it is desirable that the further prosecution of the liquidation should be at once put an end to with a view to the continuance of the company and the resuming the active working of the quarry.

"3rd. That Mr. C. E. W., the chairman of the directors,

be requested forthwith to present such petition to the Court of Chancery, and to take such steps as he may be advised with a view to giving effect to the preceding resolutions. **Prec.VIII.**

"4th. That the liquidators be requested, in conjunction with the directors, to call an early meeting to hear the result of the proposed application to the Court of Chancery, and to take such steps as the then existing circumstances of the company may appear to render desirable."

14. That the necessity for winding up the said company was occasioned by the refusal of a large number of the shareholders who were dissatisfied with the prospects and did not believe in the worth of the quarry to pay any further calls upon their shares, by reason whereof the directors were unable to discharge the debts and liabilities of the company. **What necessitated winding up.**

15. That, with a view to meet the wishes of these last-mentioned shareholders, two several resolutions were proposed and unanimously carried at the said extraordinary general meeting of the company of the 1st of February, 1869, when the said resolutions for winding up the said company were so, as hereinbefore stated, passed, and which two resolutions were in the words and figures following (that is to say): "That the liquidators be instructed to endeavour to obtain the assent of the shareholders to a proposal that, upon payment by the holders of the ordinary shares of all arrears of former calls with interest, together with 4s. per share in respect of the call of 10s. per share made in December, 1867, and upon their assenting to have their shares forfeited they be relieved from all liability in respect of calls, that the liquidators be requested to report the result of their efforts to a meeting to be called at an early date." And on the 4th day of February, 1869, a printed notice of the proceedings at the said extraordinary general meeting on the said 1st of February, was, by the direction of the said liquidators sent by the secretary of the said company to every shareholder. **Resolutions for benefit of dissentients.**

16. That pursuant to the directions contained in the said last-mentioned two several resolutions, the said liquidators, on the 13th day of February, 1869, caused a lithographed notice to be sent round to every shareholder, which, so far as the same is material to be herein set forth, was in the words and figures following (that is to say): "The scheme (as stated at **Notice of proposed arrangement.**

Prec.VIII.

the late meeting) is based upon the calculation that payment by the holders of ordinary shares of the sum of 4*s.* per share in respect of the call of 10*s.* made in December, 1867, together with the arrears of former calls, and interest thereon, would about suffice to pay off all the debts of the company, together with the costs of winding it up voluntarily, the object of the proposed scheme, which, however, in accordance with the instructions given to the liquidators at the last meeting, is to be submitted to a future ordinary general meeting, and must in any event be sanctioned by the Court before it can become binding upon the company, is to enable those shareholders who desire at once to retire from the company to do so upon simply paying 4*s.* per share in respect of the call of 10*s.* made in December, 1867, together with the arrears, if any, in respect of any former calls, and the interest due upon the last-mentioned arrears. On the other hand, those shareholders who may still desire to remain in the company will be at perfect liberty to do so, provided they are willing to pay the full amount now owing from them. Should this scheme be carried out, the quarry will really become the property of those shareholders who may determine to remain, and it is conceived that should they all concur in desiring to have further proceedings in the winding up stayed with a view to working or disposing of the quarry, there will not be much difficulty in obtaining the sanction of the Court to this arrangement, all debts, however, being first paid. If you desire to retire upon the terms above referred to, please to sign and forward to us, to the care of C. R. J——, Esq., 78, — Street, Manchester, on or before the 23rd day of February, 1869, the annexed form. If you do not reply by the time named we shall assume that you decline to retire on these terms, and must act accordingly.

Approval of
proposed
arrangement
by members.

17. That in response to the said last-mentioned notice, 35 out of the entire number of shareholders then upon the register of the said company, being 43 in all, intimated to the said liquidators their approval of the said proposed scheme and 22 shareholders holding amongst them 5,895 ordinary shares, intimated their desire to avail themselves of the said proposed compromise, and to retire from the company in accordance with its provisions; and thereupon the said liquidators, on the 25th day of February, 1869, by a lithographed circular of that date, which was on that day duly sent to every

shareholder pursuant to the directions given to them by the said hereinbefore stated resolutions of the said meeting of the first day of the same month, duly convened an extraordinary general meeting of the said company for the 9th day of March, 1869, to hear and consider a report of the result of their efforts to give effect to the wishes of the shareholders as expressed in the said hereinbefore stated resolutions of the said meeting of the 1st day of February, and by the said last-mentioned circular, after stating the said hereinbefore stated proposal for a compromise, a notice of an intended resolution was given in the words and figures following, that is to say : We hereby give you further notice that at the said meeting the following extraordinary resolution will be proposed : " That this meeting approves of the liquidators compromising the claims of the company in respect of calls upon the terms appearing in the proposal set forth in the notice convening the meeting, and requests them to take such steps by application to the Court of Chancery or otherwise as they may deem expedient to enable them to give effect to this proposed compromise."

Proc.VIII.

18. That in accordance with the said hereinbefore lastly stated notice an extraordinary general meeting of the said company was duly held upon the said 9th day of March, 1869, when the said resolution, in the last preceding paragraph stated was duly passed by the said meeting on the terms hereinbefore set forth, and a lithographed notice of the same having been so passed was, on the 10th day of the same month of March, 1869, duly sent by the liquidators to every shareholder, and such proposed compromise has since been approved by the said order of this honorable Court, made at chambers upon the said 24th day of March, 1869. A lithographed notice of the said last-mentioned order having been made, was, on the 19th day of April, 1869, duly sent by the said liquidators to every shareholder.

Further notice.

19. Under the circumstances hereinbefore stated or appearing, your petitioner submits that the making the order hereby prayed for, putting an end to the winding up of the said company, will be expedient and proper, and will merely be a carrying out of the intention of the shareholders at the time of their passing their hereinbefore stated resolutions for winding up the said company.

Proposed order for benefit of all parties.

Your petitioner therefore humbly prays your lordship :—

Prec.VIII.

1. That pursuant to and by virtue of the powers conferred upon the Court by the 89th and 138th Sections of the Companies Act, 1862, and of all other powers the Court hereunto enabling, all further proceedings in relation to the said winding up may be ordered to be stayed.
2. That the said liquidators may be ordered out of the assets of the company in their power to pay the costs of this petition, and to pay and transfer to the directors of the said company all the moneys, property, and effects of the said company in their possession or power, and that they may thereupon be discharged from all further liability.
3. Or that your lordship will make such further or other order in the premises as to your lordship shall seem meet.

And your petitioner will ever pray, &c.

It is intended to serve this petition upon the said South Barrule Slate Quarry Company, Limited, and the said liquidators.

ORDERS.

The following are some of the orders commonly made on or in relation to winding-up petitions :—

ORDER I.

APPOINTING PROVISIONAL OFFICIAL LIQUIDATOR.

Orders.

UPON the application of — and —, both of —, creditors of the above-named company, the petitioners in the petition presented in these matters on the 1st day of September, 1876, by summons dated the 8th day of September, 1876, and upon hearing the solicitors for the applicants and for the said company, and upon reading the said petition and two affidavits of J. H., one of the petitioners, filed the 10th and 12th September, 1876, respectively, and an affidavit, &c., and by consent of the said company, The Judge doth hereby appoint W. M., of —, public accountant, provisionally official liquidator of the above-named company. And it is ordered that the said W. M. do, on or before the 9th of November, 1876, give security, to be approved by the judge. And it is ordered that the said W. M. do, on the 2nd day of May, and 2nd day of November, 1877, and the same days in each succeeding year, leave his accounts at the chambers of the judge. And it is ordered that all monies to be received by the said W. M. be paid by him into the Bank of England to the credit of the account of the provisional official liquidator of the said company within seven days after the receipt thereof. *Milan Tramway Co., Limited*, Hall, V.-C. 15 April, 1876, B. 1611.

The Court may at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the Court think fit; the Court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint *provisionally an official liquidator* of the estate and effects of the company. Section 85 of the Act.

Where it is desired to appoint provisionally an official liquidator, an application for that purpose may, at any time after the presentation of

Orders.

the petition for winding up the company, be made by summons without advertisement or notice to any person, unless the judge shall otherwise direct; and such provisional official liquidator may, if the judge thinks fit, be appointed without security. Rule 15 of the Gen. Ord. of Nov., 1862.

In the *Marseilles Extension, &c., Co.*, a liquidator was appointed on motion, and to avoid delay (it being feared that part of the assets would be made away with,) the Court accepted his undertaking to give security, the petitioner undertaking to be liable for monies, &c., received by such liquidator, W. N. 1867, 68. See also, *infra*, p. 633, Order VIII.

Provisional liquidators are very commonly appointed. In many cases the company consents; where it does not, there ought to be evidence of special circumstances, *e.g.*, the insolvency of the company, rendering the appointment expedient. *Railway Finance Co.*, W. N. 1876, 196; W. R. 754, *Clifoden Benefit Building Soc.*, 3 Ch. 462; *Emmerson's Case*, 2 Eq. 231; *In re London and Manchester, &c., Co.*, W. N. 1875, 256.

A provisional liquidator appearing on a winding-up petition will not generally be allowed his costs. *General International Agency Co.*, 36 Beav. 1; 13 W. R. 363. However, in *The Times Life Assurance Co.*, the petition being dismissed, the provisional liquidator was allowed his costs.

ORDER II.**APPOINTING PROVISIONAL LIQUIDATOR AND RESTRICTING HIS POWERS.**

[*Appointment of provisional official liquidator.*] And this Court doth hereby limit and restrict the powers of the said J. C. to the following acts (that is to say) to getting in and protecting the assets of the said company until further order. *The General Sewage and Manure Co., Limited*, M. R., 2 August, 1876, A. 1494.

The Court may provide by any order that the official liquidator may exercise any of the above powers [*i.e.*, the powers specified in Section 95 of the Act], without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed, may limit and restrict his power by the order appointing him. Section 96 of the Act.

ORDER III.**APPOINTING PROVISIONAL LIQUIDATOR AND RESTRICTING HIS POWERS.**

[*Appointment of provisional liquidator without security, usual directions as to accounts and payment into bank.*] And it is ordered that the said M. be at liberty to advance the

money necessary to pay wages and keep the collieries in his said affidavit mentioned going, and to repay himself out of the first monies coming to his hands. And the judge doth hereby limit and restrict the powers of the said M. to taking possession of and protecting the funds and property of the said company till further order. *Victoria and Fenton Park Colliery Co.*, Bacon, V.-C., 7 April, 1876, B. 691.

Orders.

ORDER IV.

APPOINTING PROVISIONAL LIQUIDATOR AND RESTRICTING HIS POWERS.

Upon, &c. [*appointment of provisional official liquidator, &c.*] And the judge doth hereby limit and restrict the powers of the said — as such provisional official liquidator to the following acts, that is to say, with the sanction of the judge,

1. To bring or defend any action, suit, or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the company.

2. To carry on the business of the company so far as may be necessary for the beneficial winding up of the same.

3. To sell the real and personal and heritable and movable property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.

4. To do all acts and to execute in the name and on behalf of the company all deeds, receipts, and other documents, and for that purpose to use when necessary the company's seal. *Sao Pedro Brazil Gas Company, Limited*, Huddleston, J. (for M. R.), 3rd September, 1876, B. 1614. See Section 95 of the Act.

ORDER V.

RESTRICTING POWERS OF PROVISIONAL LIQUIDATOR.

And this Court doth hereby limit, &c., to the following acts, namely:—

1. To bring or defend, &c.

2. To carry on the business, &c.

3. To act in all cases of emergency and in matters relating to the disposition or management of the company's property,

Orders. as the nature of the case may require, and generally to do all such things as may be necessary for the above purposes, except the proceeding to settle the list of contributories, and adjudging upon debts and claims. *Canada Tanning Extract Co., M. R., 8th August, 1876, A. 1574.*

ORDER VI.

RESTRAINING ACTION.

Upon motion this day made unto this Court for W., a shareholder in the above-named company, and upon reading the petition of the said W., preferred unto this Court to wind up the said company, and an affidavit, &c., and an affidavit of — filed the — day of —, whereby it appears that an action has been commenced by A. & B. against the above-named company for the recovery of the sum of 60*l.* 10*s.* And the said W. by his counsel undertaking to abide by any order this Court may make as to damages, in case this Court should hereafter be of opinion that the said A. & B. shall have sustained any by reason of this order, which the said W. ought to pay, This Court doth order that the said A. & B. be restrained from further prosecuting the action commenced by them against the said company as in the said affidavit of the said — mentioned until the hearing of the said petition, or until further order. *Great Mountain Silver Lead Mining Co., Limited, Malins, V.-C., 16th March, 1876, A. 441.*

By Section 85 (*supra*, p. 627) :

"The Court may at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company upon the application of the company, or of any creditor or contributory of the company restrain further proceedings in any action, suit, or proceeding against the company. . . ."

"A petition praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the Court, and which is hereinafter referred to as a winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court." Section 148 of the Act.

Where a company is being wound up voluntarily, the Court may, upon the application of the liquidators or any contributory of the company, exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court. Section 138 of the Act, *supra*, p. 619. Under this section the power to restrain actions, &c., given by Section 85, can be exercised. *Needham v. Rivers Protection*

and Manure Co., 1 Ch. Div. 253. *Walker v. Banagher Distillery Co.*, W. N. 1875, 215. **Orders.**

"Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate and effects of the company after the commencement of the winding up, shall be void to all intents." Section 163 of the Act.

"When an order has been made for winding up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose." Section 87 of the Act.

See also Sections 197, 198, 201, and 202.

The object of the Act of 1862 is that there shall be an equal distribution of assets among the creditors, and accordingly in the absence of special circumstances the Court will, after the presentation of a winding-up petition, intervene to restrain actions, executions, distresses, and other proceedings which would defeat that object.

But if the company has unfairly delayed the creditor, the Court will, under Section 87, allow him to proceed with the execution. *Imperial Steam Co.*, 37 L. J. Ch. 517; *Re London Cotton, & Co.*, 14 W. R. 575; *Dimson's Fire, & Co.*, *ubi supra*. See, however, observations of Jessel, M.R., *In re Universal Disinfecting Co.*, 20 Eq. 162.

If before the presentation of the petition a creditor has issued execution under which goods of the company have been seized by the sheriff, the Court will not, in general, restrain the sale. *The Great Ship Co.*, 12 W. R. 139; 33 L. J. Ch. 245. See also *Re Baston*, 4 Eq. 681, and *Dimson's Fire, & Co.*, 19 Eq. 202, and cases there cited. But the Court has power and will, if necessary, impose terms on the execution creditor. *Re Baston, ubi supra*, where the creditor was only allowed to sell such of the property seized as consisted of pig-iron.

In re Plas-y-n-Mhowys Coal Co., 4 Eq. 689, the sheriff was restrained *ex parte* from selling the property seized until the hearing of the petition, and upon a winding-up order being made he was directed to deliver possession to the liquidator, who was to sell, giving the execution creditor the same priority against the proceeds as if the sale had been made by the sheriff. The order is given in 4 Eq. 691. See also *Re Hill Pottery Co.*, 1 Eq. 649. The order in this case is given in Pemberton, 688.

Whether leave ought under any circumstances to be given to issue execution after a winding-up order is doubtful. *Re Universal Disinfecting Co.*, *ubi supra*.

Where upon the morning of the day upon which a winding-up order was made the landlord put in a distress for rent, the Court allowed him to proceed. *Re Eshall Mining Co.*, 12 W. R. 727.

And where a company, having agreed to take an assignment of a lease, continued in possession after the winding-up order and left goods on the premises, it was held that the lessor was not prevented by Sections 87 or 163 of the Act from distraining on the goods for rent accrued since the winding up. *In re Lundy Granite Co.*, 6 Ch. 462.

Section 10 of the Judicature Act, 1875, has not altered a landlord's position under the Act of 1862. *In re Coal Consumers Co.*, 4 Ch. Div. 625.

There is a conflict of authority as to the Court to which an application under Section 85 of the Act to restrain an action should be made. The

Orders.

Master of the Rolls considers that, having regard to Subsection 5 of Section 24 of the Judicature Act, 1873, application ought to be made to the Divisional Court of the Division before which or (where a judge can be selected,) to the judge before whom the action is pending, *In re People's Garden Co.*, 1 Ch. Div. 44; *In re Morriston, &c., Co.*, W. N. 1877, 20.

The subsection above referred to is as follows :

- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment, or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purpose of justice; and the Court shall thereupon make such order as shall be just.

Malins, V.-C., on the other hand, considers that the Chancery Division can restrain an action pending in any other Division in the same manner as it could before the Judicature Act. *Needham v. Rivers Protection and Manure Co.*, 1 Ch. Div. 253. In this case the V.-C. made an order restraining an action in the Common Pleas Division, and his Lordship has since frequently made such orders.

Bacon, V.-C., takes the same view as Vice-Chancellor Malins. *In re Stapleford Colliery Co.*, 24 W. R. 173; W. N. 1875, 256; and so does Hall, V.-C., who has made many orders restraining actions in the other Divisions. See *infra*, Orders VIII. and IX.

Moreover, in *Kingchurch v. The People's Garden Co.*, 1 C. P. Div. 45 (Nov. 10, 1875), an application was made to the Common Pleas Division to stay an action against a company, for the winding up of which a petition was pending before the Master of the Rolls. The Court (Coleridge, C.J. and Grove and Archibald, J.J.), were clearly of opinion that they had jurisdiction to make the order, but considered that the M.R. also had jurisdiction, and that it was much more convenient that the application should be made to him. Accordingly the order was refused.

There can be no doubt that it is far more convenient that the Court of Chancery should have power to restrain actions in the other divisions against a company for the winding up of which a petition has been presented. And it is to be hoped that the view taken by the three Vice-Chancellors and the Common Pleas Division will, (should the matter come before the Court of Appeal,) be held to be correct. See further, *Walker v. Banagher Distillery Co.*, 1 Q. B. 129; *Garbutt v. Fawcett*, 1 Ch. Div. 155; Seton on Decrees, 324.

ORDER VII.

Orders.

RESTRAINING ACTIONS.

Upon motion this day made unto this Court by R., claiming to be a creditor of the above-named company, the petitioner named in a certain petition on the 16th May, 1876, preferred unto this Court to wind up the said company, and upon reading, &c., and the said R. by his counsel undertaking, &c., should this Court hereafter be of opinion that the persons named in the schedule to this order shall have sustained any damage by reason of this order, which the said R. ought to pay, This Court doth order that the persons named in the schedule to this order be restrained from further prosecuting the several actions in the same schedule mentioned commenced by them against the said company until, &c.

THE SCHEDULE ABOVE REFERRED TO.

		£ s. d.		
1	N. v. The Yorkshire &c. Company, Limited, Common Pleas Division. For goods	65	0	0
	[Here follow the particulars of seven other actions.]			
9	— v. The &c. Company, Limited, Leeds County Court. For goods	18	0	0

The *Yorkshire Civil Service Supply Association, Limited*,
Malins, V.-C. 17 May, 1876, B. 800.

ORDER VIII.

RESTRAINING ACTION BY A COMPANY.

Upon motion, &c., for the *W. & B. Co., Limited*, and upon hearing counsel for the *Central American Telegraph Co., Limited*, and for G. A. C., hereinafter named, and upon reading the petition of the *W. & B. Co., Limited*, on the 20th May, 1876, preferred unto this Court, and the affidavits of, &c., all filed the 21st May, 1876. This Court doth hereby appoint G. A. C., of —, provisionally official liquidator of the said

Orders. Central, &c., Co., Limited, he by his counsel undertaking to give such security as the Court may direct, within ten days after the date of this order, And the said W. & B. Co., Limited, by R. N. C., their secretary, undertaking [*usual as to damages*]. This Court doth order that Hooper's Telegraph Works, Limited, and their solicitors and agents, be restrained from further prosecuting the three several actions respectively commenced by them, as in the said affidavit of the said R. N. C. mentioned, and from commencing or prosecuting any further actions against the said Central, &c., Co., until the hearing of the said petition or until further order. *Central American Telegraph Co., Limited*, Hall, V.-C., 31 May, 1876, A. 933.

ORDER IX.

APPOINTING PROVISIONAL LIQUIDATOR AND RESTRAINING ACTION.

Upon motion, &c., for W. W., of —, trading under the style of —, the petitioner named, &c., and upon hearing, &c., this Court doth appoint J. C., of —, provisionally official liquidator of the said company. And it is ordered that he the said J. C. do on or before the 12th day of August next, give security to be approved by the judge. And it is ordered [*accounts—balances to be paid into bank, &c.*] and the petitioner W. W. [*usual undertaking.*] This Court doth order that W. D., of —, be restrained from prosecuting the action commenced by him in the Queen's Bench Division of this Court against the said company until, &c. *National Funds Assurance Co., Limited*, Hall, V.-C., 27 Nov. 1876, B. 1471.

ORDER X.

RESTRAINING REMOVAL OR SALE OF GOODS.

Upon motion, &c., for —, of —, the provisional official liquidator of the above-named company, and upon reading, &c., and [*undertaking as to damages*], this Court doth order that R., of —, his servants and agents, be restrained until over the 18th day of May, 1876, or until further order of this Court, from removing or selling the goods now on the premises situate at No. 17, Garrick Street, &c., in the affidavit

mentioned ; and it is ordered that the said provisional official liquidator be at liberty to give the said — notice of motion for an injunction for the 18th day of May, 1876. *British Guardian Life Assurance Co., Limited*, Hall, V.-C., 15 May, 1876, A. 878.

Orders.

ORDER XI.

RESTRAINING FURTHER PROCEEDINGS UNDER JUDGMENT AND EXECUTION.

Upon motion, &c., for J. S., of —, the sole petitioner, &c. And [*usual undertaking*]. This Court doth order that the said J. H. N. be restrained until the hearing of the said petition, or until further order, from continuing any further or other proceedings under the judgment and execution obtained by him against the said company. *Newbury and Lamborne Tramway Co., Limited*, Huddleston, B. (for Bacon, V.-C.), 20 Sep. 1876, B.

ORDER XII.

RESTRAINING PERSONS FROM PARTING WITH MONIES.

Upon motion, &c., for H., the petitioner, &c. This Court doth order that Messrs. F., P., and F. be restrained until the hearing of the said petition from parting with the proceeds of the sale of the furniture and effects in the order dated the 15th November, 1876 mentioned, except by paying the same into Court. *Bayswater Club, &c., Co., Limited*, Hall, V.-C., at chambers, 24 Nov. 1876, A. 1819.

ORDER XIII.

RESTRAINING SHERIFF FROM SELLING.

Upon motion, &c., for C., of —, claiming to be a creditor of the above-named company, who alleged that a petition for winding up the said company was on the 31st day of May, 1876, preferred unto this Court by him, that Messrs. A., of —, in the affidavit of the said C. named, have obtained judgment against the said company, and levied execution upon the goods and chattels of the said company, now in or about the offices No. —, Charing Cross, &c., and upon reading the

Orders. said affidavit, and the said [*usual undertaking*], This Court doth order that the sheriff of Middlesex be restrained until the hearing of the said petition or until further order from selling any of the said goods and chattels under the said execution. *Percy, &c., Co., Limited*, M. R., 27 April, 1876, B. 656.

ORDER XIV.

RESTRAINING ISSUE OF EXECUTION.

Upon motion, &c., for &c., who alleged that J. W. and F. P. have obtained judgment against the above-named company for the sum of 57*l.* 6*s.* 9*d.*, and are in a position to issue execution against the said company, as by the affidavit of the said —, filed, &c., appears, and that a petition was on the 6th of April, 1876, preferred, &c., and that by an order dated the 7th of April, 1876, the said — was appointed provisionally official liquidator of the said company, and upon reading the said affidavit, petition, and order, and [*usual undertaking*] this Court doth order that the said J. W. and F. P. be restrained, until, &c., from issuing execution on the judgment obtained by them against the said company referred to in the affidavit of the said —. *Victoria and Fenton, &c., Co., Limited*, Bacon, V.-C., 31st May, 1876, B. 914.

ORDER XV.

RESTRAINING DISTRESS FOR RATE.

Upon motion, &c., for —, and —, the liquidators of the above-named company, and upon reading the petition of T. B., on &c., preferred unto this Court, and two affidavits, &c., and [*usual undertaking*] this Court doth order that the corporation of the Borough of Hanley, their solicitors and agents, be restrained until after the hearing of the said petition from proceeding to levy a distress on the goods of the said company in respect of the rate or sum of £—, in the said affidavit of the said — mentioned. *Hanley Hotel Co., Limited*, M. R., 23rd May, 1876, A. 881.

ORDER XVI.

TRANSFERRING PETITION FROM ONE JUDGE TO ANOTHER.

Upon the petition of F. H., this day preferred unto this

Court, and the solicitors for the above-named company, parties having subscribed the said petition, signifying their consent to the prayer thereof. It is ordered that the above-mentioned matters marked for the Master of the Rolls be transferred to the Vice-Chancellor Sir Charles Hall, and that the same when so transferred be hereafter considered as matters originally marked for the Vice-Chancellor Sir Charles Hall, provided that no order made by the Master of the Rolls be varied or reversed, otherwise than by the Court of Appeal. *British Guardian Life Assurance Co., Limited*, Lord Chancellor, 11th May, 1876, A. 836. See also Seton on Decrees, 318.

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When a petition to wind up a company has been presented, another petition for the same purpose subsequently presented and marked for some other judge will be ordered to be transferred to the judge with whose name the first petition is marked. *In re West Hartlepool Ironworks Co.*, 10 Ch. 629. In this case (it was before the Judicature Act,) the transfer was ordered by the L.J.J. on motion for the first petitioner.

Since the Judicature Act the Court of Appeal has no jurisdiction to order a transfer. *In re Boyd's Trusts*, 1 Ch. Div. 12. Transfers are now made under Order LI., Rule 1, by the Lord Chancellor. Application to the Secretary of the Lord Chancellor is sufficient if accompanied by the written consent of all parties. If all parties do not consent, the application must be made in Court. See Memorandum, 1 Ch. Div. 41; Morgan's Ch. Acts, 591; Seton on Decrees, 320.

It may here be mentioned that by Order LI., Rule 2 A. of the Rules (Judicature Act, 1875), "When an order has been made by any judge of the Chancery Division for the winding up of any company under the Companies Acts, 1862 and 1867, or for the administration of the assets of any testator or intestate, the judge in whose Court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so transferred, as the case may be."

This rule, however, does not enable a judge of the Chancery Division who has made an order for winding up a company, to direct the transfer to himself of a winding-up petition pending before another judge of the same Division. *Re National Funds Assurance Co.*, 25 W. R. 23.

ORDER XVII.

LEAVE TO FILE AFFIDAVIT VERIFYING PETITION AFTER THE FOUR DAYS' LIMIT.

Upon motion, &c., for A., who alleged that the said A. on the 1st day of April, 1876, presented his petition in these

Orders. matters to this Court, but omitted to file his affidavit in support of such petition within the time limited in that behalf by the general order of this Court, and upon reading an affidavit of R. L., filed the 11th of October, 1876, this Court doth order that the said L. P. A. be at liberty to file his affidavit in support of the said petition notwithstanding the time limited for that purpose has expired. *Civil, &c., Supply Association*, M. R., 11 April, 1876, A. 723.

"Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto in the form or to the effect set forth in Form No. 2 in the third schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary, or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition." Gen. Ord., 1862, Rule 4.

The Form referred to in the above Rule is as follows:

In Chancery,

In the matter, &c.

I, A. B., of, &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A., as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true. Sworn, &c.

The affidavit in support of the petition for winding up having been inadvertently filed before the petition was presented, the Court ordered the petition to be presented again, the affidavit to be re-sworn, and the order for winding up dated subsequently. *Re Western Benefit Building Society*, 33 L. J. Ch. 179; 33 Beav. 368.

The four days limited by the above Rule for filing the affidavit verifying the petition may, under Rule 73 [*infra*, p. 647,] be extended by the Court. *Re Patent Screened Boot and Shoe Co.*, 32 Beav. 142.

Where the affidavit had not been sworn till nine days after the presentation of the petition, it was ordered nevertheless that it should be taken as sufficient *prima facie* evidence of the statements in the petition. *The Kentish, &c., Co.*, 13 W. R. 448.

And in the *East Cambrian Gold Mining Co.*, 12 L. T. N. S. 587, the Court under special circumstances, made a winding-up order although the affidavit in support of the petition had not been filed within four days.

In the *London and Westminster Co-operative Store Co.*, 17 L. T. N. S. 559, the affidavit had not been sworn till the fifth day, and Lord Romilly, M.R., under Rule 73, enlarged the time.

In the case of the *Anglo-Danish Steam Navigation Co.*, 15 W. R. 106; 15 L. T. 407, the petitioner residing at Dantzic, the Court, upon motion, enlarged the time for filing the affidavit to ten days.

In the case of the *Fortune Copper Mining Co.*, 10 Eq. 390; 22 L. T. 650, a petition had been presented under a power of attorney executed

by the petitioner, who was resident in a colony, to a solicitor in this country, and, it being impossible to comply with the above rule, the Court made the winding-up order upon verification of the petition by an affidavit of the solicitor, deposing of his own knowledge to the facts stated in the petition.

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ORDER XVIII.

COMPULSORY WINDING UP.

Upon the petition of A. [*or of the above-named company*] a creditor [*or a contributory of the above-named company*] on the — day of — preferred unto Her Majesty's High Court of Justice, and upon hearing counsel for the petitioner and for the respondents, the above-named company, and for B., a creditor of the said company, and upon reading the said petition, an affidavit of A., filed the — day of —, verifying the said petition, an affidavit of &c., the *London Gazette*, of the — day of —, the *Times* newspaper, of the — day of — [*enter any other newspapers*], each containing an advertisement of the said petition. This Court doth order that the above-named — Company, Limited, be wound up by this Court under the provisions of the Companies Acts, 1862 and 1867. And it is ordered that the petitioner and the said company and the said B. be allowed their costs of and relating to the petition out of the assets of the said company, such costs to be taxed by the taxing master.

If several creditors and contributories appear and support the petition the order as to costs will be as follows :

And it is ordered that the said A., and the said company, and the said B., C., D., and E., be allowed their costs of and relating to the petition out of the assets of the said company, such costs to be taxed by the taxing master, who is to allow only one set of costs between the said — and — (*the creditors*), and only one set of costs between the said — and — (*the contributories*).

COSTS.

With regard to costs :—

- (1.) Where a winding-up order is made, the usual order is that the petitioner, the company, and the shareholders and creditors appearing in support of the petition are to be paid their costs out of the assets of the company, but only one set of costs is given to

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such shareholders and one to such creditors. *In re Humber Iron Works Co.*, 2 Eq. 15; *In re European Banking Co.*, *Ex parte Baylis*, 2 Eq. 521.

- (2.) Where the petition is dismissed, the petitioner is usually ordered, as *In re European Banking Co.*, *Ex parte Baylis*, *ubi supra*, to pay the costs of the company, and one set of costs to the shareholders and creditors opposing. See also *Heaton's Co.*, W. N. 70, 84.

But there is no rule that only one set of costs should be given to opposing creditors and shareholders. Thus in the case of *Re Anglo-Egyptian Navigation Co.*, 8 Eq. 660, James, V.-C., having dismissed the petition, said: "Generally, no doubt, the Court will not grant more than one set of costs to the same class of persons opposing. Thus it will, as a general rule, give only one set of costs to creditors opposing, be they 10 or 10,000. So it will only give one set of costs to opposing shareholders, supposing it finds that the opposing shareholders are sufficiently represented by one set of opponents. . . . Here the opposing shareholders have a distinct interest apart from the company, and whilst, no doubt, the opposing shareholders constitute the majority, yet I think, there is a substantial conflict of interest between the shareholders who oppose and those who support this petition, apart from the interest of the company; the argument having been that the opponents were a preponderating majority, and were in a position to overbear the rest. On that ground I give the opposing shareholders one set of costs in addition to those of the company."

So also in *Re Albion Bank*, W. N. 1866, 388, an affidavit having been filed on behalf of the company, showing that the bank was in a satisfactory condition, and the petitioner not having answered it, although he had had full opportunity, the petition was dismissed and the petitioner was ordered to pay the costs of all parties.

In *Re Humber Iron Works Co.*, 2 Eq. 15, Romilly, M.R., laid down a rule on which he intended to act, that where the Court refused to make a winding-up order, shareholders or creditors supporting the petition would not have their costs, and that shareholders, directors, and others opposing would not have their costs unless personally assailed by a charge which is disproved, but as appears from the cases before mentioned this rule is not now acted on.

In some cases, although a petition is dismissed, the company is ordered to pay the petitioner's costs. See *supra*, p. 599, and *The Great Northern Copper Co.*, 14 W. R. 715.

As to costs where the petition is withdrawn, see *infra*, p. 647.

COSTS OF CONCURRENT PETITIONS.

As to the costs of concurrent petitions;

Where two or more petitions have been presented for the winding up of the same company, and the subsequent petitioners had not notice of the presentation of the first one, the usual course is to make one winding-up order on all, in which case the petitioners get their costs. *Owen's Patent Wheel Co.*, 22 W. R. 151; W. N. 1873, 226. *Australian Agency Corp.* 22 W. R. 45. See Order XIX., *infra*, p. 642.

But each of several petitions will be looked at separately on its own merits, and the Court will consider whether, if there were no other

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ORDER XIX.

COMPULSORY WINDING UP. ON TWO PETITIONS.

Upon the petition of R. W. S., of —, a creditor of the above-named company, on the 3rd day of April, 1876, preferred unto this Court, and upon the petition of E. P., of —, another creditor of the above-named company on the 12th day of April, 1876, preferred unto this Court, and upon hearing counsel for the respective petitioners for the above-named company, and for L. C. A., a creditor, and upon reading the said petitions respectively, an affidavit of the said R. W. S. filed the 6th of April, 1876, verifying the first-mentioned petition, and an affidavit of the said A. P., verifying the secondly-mentioned petition, the *London Gazette*, the *Times* newspaper, and the *Standard* newspaper, all of the 10th day of April, 1876, each containing an advertisement of the first-mentioned petition, and the *London Gazette*, &c., each containing an advertisement of the secondly-mentioned petition, an affidavit of R. W. S., filed the 24th day of April, 1876, an affidavit, &c., a joint affidavit of A. A. R. and J. C. W., filed, &c., and two several affidavits of the said L. C. A., filed respectively, &c., This Court doth order that the B., &c., Co., Limited, be wound up by this Court under the provisions of the Companies Acts 1862 and 1867, and that the petitioners respectively, and the said company and the said L. C. A. be allowed their costs of or relating to the said petitions respectively, out of the assets of the said company, such costs to be taxed by the taxing master. *British Guardian Life Assurance Co.*, Hall, V.-C., 2nd May, 1876, A. 951.

ORDER XX.

COMPULSORY WINDING-UP ORDER, AND APPOINTMENT OF RECEIVER IN ACTION BY DEBENTURE HOLDERS.

Upon the petition of H., of —, on the 4th of August, preferred unto, &c., and upon hearing counsel for the petitioner and for the respondent, the Canada Tanning Extract Company, Limited, and for the plaintiff, a creditor and debenture holder of the said company, and upon motion at the same time made unto this Court by counsel for the plaintiff and upon hearing counsel for the plaintiff and for

Orders.

the defendants, and upon reading the said petition and the following evidence thereon, namely, an affidavit, &c., and the following evidence on the said motion, namely, &c., This Court doth order that the Canada Tanning Extract Company, Limited, be wound up by the Court under the provisions of the Companies Acts, 1862 and 1867. And it is ordered that a proper person or persons be appointed to receive the rents and profits of the lands, tenements, and hereditaments comprised in a certain indenture, dated, &c., and made between the defendant company of the one part, and the defendants S. and H. of the other part in the writ mentioned, and of all the other lands, estates, buildings, and immovable property of the defendant company, and also all the movable estates and effects of the defendant company. And it is ordered that such receiver or receivers be the same person or persons as shall be appointed liquidator or liquidators in the said winding up, and that the plaintiff in the said action be at liberty to propose a person or persons to be such liquidator or liquidators accordingly. And it is ordered that all further proceedings in the above action be stayed except for the purposes of this order. And it is ordered that the plaintiff do add his costs of the said action to his security in the said writ mentioned, and that the costs of the defendants be costs under the winding up. And it is ordered that the petitioner and the respondents and the said T. R. be allowed their costs of and relating to the said petition out of the assets of the said company, such costs to be taxed by the taxing master. *Canada, &c., Co., Limited*, M. R., 11th November, 1876, A. 1774.

The above order was made in the matter of the company and of the Acts of 1862 and 1867, and of an action of T. Robinson on behalf of himself and all other the debenture holders of the company v. the company and the trustees for the debenture holders. See further, *supra*, p. 411, as to appointing the same person to be receiver and liquidator.

ORDER XXI.

DISMISSING PETITION WHERE PROVISIONAL LIQUIDATOR HAD BEEN APPOINTED.

Upon the petition of T. and H., both of —, printers, &c., carrying on business under the style or firm of — and —, on the 8th day of September, 1876, preferred unto this Court praying that the Milan Tramway Company, Limited, might

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be wound up by the Court under the provisions of the above-mentioned Acts, and upon hearing counsel for the petitioners for the Milan Tramway Company, Limited, and for provisional official liquidator hereinafter named, and upon motion at the same time made unto this Court by the said petitioners, and upon hearing counsel for the provisional official liquidator hereinafter named, and upon reading the said petition, and the order dated the 15th day of April, 1876, whereby it was ordered [*appointment of provisional official liquidator, provisions as to accounts and payment into bank*], This Court doth order that the said petition do stand dismissed. And it is ordered that the said order, dated the 18th day of September, 1876, be, and the same is hereby discharged. And it is ordered that notwithstanding the said order, the chief clerk of the judge and the said provisional official liquidator be at liberty to sign a cheque in favour of the said company, or of Mr. —, their solicitor, for any balance standing to the credit aforesaid. *Milan Tramway Co., Limited*, Field, J. (for Hall, V.-C.), 17th October, 1876, B. 1717.

“Upon the hearing the Court may dismiss the same [*i.e.*, a winding-up petition,] with or without costs, may adjourn the hearing conditionally or unconditionally, and may make an interim order, or any other order that it deems just.” Section 86 of the Act.

ORDER XXII.

DISMISSING PETITION WITHOUT COSTS (see *supra*, p. 606).

Upon, &c. This Court doth order that the said petition do stand dismissed, but without costs. But it is ordered that the costs of the said company of and occasioned by this application, and the costs and charges incurred by Mr. F. W. as the chairman of the meeting held in this matter on the 7th of May, 1875, be paid out of the estate of the company. And this Court doth not think fit to make any order as to the costs of the other parties appearing. *Emma Mining Co.*, Malins, V.-C., 28th May, 1875, A. 946.

ORDER XXIII.

PETITION TO STAND OVER. LIBERTY FOR PETITIONER TO BRING ACTION.

The petition of W. C. K., of, &c., that an order might be

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made for the winding up of the above-named company by the Court under the provisions of the Companies Acts, 1862 and 1867, preferred unto H. M. High Court of Justice, standing this day in the paper, and upon hearing counsel for the petitioner and for the said company and J. J. S., the liquidator, and upon reading the said petition, and the company and the said J. J. S., by their counsel respectively undertaking until further order not to present any petition to wind up the said company, and to give immediate notice to the petitioners of any other petition having been served upon them for winding up the said company, This Court doth order that the said petition do stand over until further order; And that the petitioner be at liberty, within ten days from the date of this order, to bring an action against the said company, under the said agreement, dated, &c., in the said petition mentioned. And any of the parties are to be at liberty to apply to the Court to restore the said petition to the paper. *Scarl Barytes, &c., Co., Limited*, M. R., 2 Dec. 1876, B. 1981.

ORDER XXIV.

PETITION TO STAND OVER AT WISH OF CREDITORS ON
SPECIAL TERMS.

The petition of F. W., claiming to be a creditor of the above-named company, on the 16th December, 1875, preferred unto this Court, coming on this day to be heard before this Court, and upon hearing counsel for the petitioner and for the said company and for C. S. and other debenture holders opposing the said petition. And the company by their counsel undertaking not to consent to a winding-up order on any other petition, and not to wind up voluntarily, and to give notice to the petitioner of any other petition for winding up the company which may be served upon them, and in the event of any such other petition being served upon them to consent to the petition being restored to the paper, and that the application for a winding-up order by it may be renewed in the same manner as if the petition had not been ordered to stand over, This Court doth order that the petition do stand over until the first petition day in Michaelmas sittings now next. *North-Western of Montevideo, &c., Co.*, Hall, V.-C., 28 Ap. 1876, B. 1377.

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In this case the great majority of the creditors desired the petition to stand over. The order was similar to that made by Jessel, M. R., in *Re St. Thomas's Dock Co.*, 2 Ch. Div. 117.

See Section 86 of the Act, *supra*, note to Order XXI.

Petitions are frequently ordered to stand over at the wish of the majority of the creditors or contributories. See *supra*, p. 606.

The objection to directing a petition to stand over is, that the winding-up order if ultimately made will relate back to the presentation of the petition, and consequently affect acts done in the meantime. *Metro-politan Ry. Warehousing Co.*, 15 W. R. 1121; 17 L. T. 108. See further, Buckley, 205.

ORDER XXV.**PETITION TO STAND OVER. INJUNCTIONS CONTINUED.**

Upon the petition, &c. This Court doth order that the hearing of the said petition do stand over till the 6th November, 1875. And it is ordered that the said order made in these matters, dated the 21st July, 1875, whereby it was ordered that —, — and — and their respective attornies and agents, should be restrained from further prosecuting the respective actions, and that —, — and —, and their respective attornies, should be restrained from issuing execution upon the judgments in the said orders respectively mentioned until the hearing of the said petition or until further order, be continued until further order. And any of the parties are to be at liberty to apply to the vacation judge to hear the said petition. *The Stapleford Colliery Co., Limited*, Bacon, V.-C., 31 July, 1875, B. 1464. See W. N. 1875, 256.

ORDER XXVI.**LIBERTY TO WITHDRAW PETITION.**

Upon the petition of J. H., of —, and M. A., of —, &c., preferred unto this Court, praying that the above-named company might be wound up under the provisions of the above-mentioned Acts, and the petitioners not wishing to proceed with the said petition, and the company waiving all costs, This Court doth order that the petitioners be at liberty to withdraw the said petition. *Langham Skating Rink Co., Limited*, Bacon, V.-C., 4 Nov. 1876, B. 1817.

A creditor of a company who has presented a winding-up petition, is entitled to dismiss his petition with costs, notwithstanding that it has been advertised and that another creditor appears at the hearing and objects. *In re Home Assurance Assoc.*, 12 Eq. 59; *Re Times Life*

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Assurance Co., 9 Eq. 382; *Re Patent Cocoa Fibre Co.*, 1 Ch. Div. 617. Petitions are frequently withdrawn, the company paying or giving the petitioner security for his debt before the hearing. The company very commonly agrees to pay the petitioner's costs, and where he was justified in presenting the petition he is entitled to such costs. *In re Alliance Contract Co.*, W. N. 1867, 218; *Re Flagstaff Mining Co.*, 20 Eq. 268.

Where a creditor who has presented a winding-up petition withdraws it at the hearing, other creditors, appearing in consequence of the advertisement, to oppose the petition, are entitled to the costs of appearance. *In re Patent Cocoa Fibre Co.*, 1 Ch. Div. 617. See also *In re Marlborough Club Co.*, 1 Eq. 216, and *Re Hereford and South Wales Waggon Co.*, 17 Eq. 423.

In *Re London and Suburban Bank*, 19 W. R. 88, a shareholder's petition having been withdrawn, he was ordered to pay the company's costs and one set to shareholders appearing to oppose. In a similar case, *Malins, V.-C.*, gave the company its costs, and one set to opposing shareholders up to the time of notice being given of the withdrawal together with the costs of the hearing. *In re Native Guano Co.*, *Times*, 17 March, 1877.

ORDER XXVII.

EXTENDING TIME FOR ADVERTISING WINDING-UP ORDER.

Upon motion &c., for C., the petitioner named in the order made on the 6th May, 1876, for the winding up of the above-named company, and upon reading the said order, This Court doth order that the time limited for the advertisement of the said order, dated the 6th May, 1876, in the *London Gazette*, pursuant to the general order of this Court, be extended to the 19th of May, 1876. *Percy, &c., Co., Limited*, Bacon, V.-C., 17 May, 1876, B. 889.

Every order for the winding up of a company by the Court shall within twelve days after the date thereof be advertised by the petitioner once in the *London Gazette*, and shall be served upon such persons (if any,) and in such manner as the Court may direct. Rule 6 Gen. Ord. 1862.

But the time may be extended under Rule 73 of the Gen. Ord. of 1862, which is as follows :

The power of the Court and of the judge sitting in chambers to *enlarge* or *abridge the time for doing any act* or taking any proceeding to adjourn, to review any proceeding and to give any direction as to the course of proceeding, is unaffected by these rules.

In some cases, where the order has not been advertised in proper time, the order has been directed to be post-dated. *Doncaster, &c., Soc.*, 11 W. R. 459; *East Cambrian, &c., Co.*, 12 L. T. 587.

ORDER XXVIII.

CONTINUING VOLUNTARY WINDING UP SUBJECT TO SUPERVISION. ORDINARY.

Upon the petition, &c. This Court doth order that the

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voluntary winding up of the said company be continued, but subject to the supervision of this Court, and any of the proceedings under the said voluntary winding up may be adopted as the judge shall think fit : And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the judge at chambers as there may be occasion. And it is ordered that the costs of the petitioner and of the said company and liquidators of and relating to this petition, be taxed by the taxing master and paid out of the assets of the company.

As to a supervision order :

When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding up should continue, but subject to the supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just. Section 147 of the Act.

By Section 149 of the Act it is provided as follows :

The Court may, in determining whether the company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors and contributories to be summoned, held, and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court ; in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Where any order is made by the Court for a winding up subject to the supervision of the Court, the Court may in such order, or in any subsequent order, appoint any additional liquidator or liquidators ; and any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company ; the Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation. Section 150 of the Act.

Where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily ; but save as aforesaid, any order made by the Court for a winding up subject to the supervision of the Court, shall for all purposes, including the stay of actions, suits, and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators.

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and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidators," shall be deemed to mean the liquidators conducting the winding up subject to the supervision of the Court. Section 151 of the Act.

Where an order has been made for the winding up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last mentioned order, or in any subsequent order, appoint the voluntary liquidators, or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators. Section 152 of the Act.

Where there is a voluntary winding up in progress, the Court will not, in the absence of special circumstances, *e.g.*, fraud or under influence, make a compulsory or supervision order. *Re Bank of Gibraltar*, 1 Ch. 69; *Re London and Mercantile Discount Co.*, 1 Eq. 277; *In re Irrigation Co. of France*, 6 Ch. 176; *Imperial Mercantile Credit Assoc.*, W. R. 1866, 257. In the case last mentioned, Page-Wood, V.-C., said, "That the legislature appeared to have very wisely thought that the shareholders of a company were the best judges of their own affairs, and had given them power of winding up voluntarily upon a resolution to that effect being passed by a specified majority of votes. This power was not to be interfered with by the Court unless in cases where there was reason to suppose that the majority had been obtained by fraud or by overbearing conduct or corrupt influence on the part of the directors."

It frequently happens that after the presentation for a compulsory winding-up order, a resolution (special or extraordinary) is passed for a voluntary winding up, subject to supervision.

In such case the petitioner, or the company, or some of the creditors or contributories will at the hearing ask for a supervision order, and if it appears that this is the wish of the parties interested effect will be given thereto unless good cause be shown to the contrary. *In re Inns of Court Co.*, W. N. 1866, 349; *In re Imperial Mercantile Credit Association*, W. N. 1866, 257.

In the case last mentioned a petition was presented by a contributory for a compulsory order. After the presentation of the petition a resolution was passed for the voluntary winding up subject to the supervision of the Court. At the hearing the petitioner asked for a supervision order, and, it appearing that this was what the majority of the creditors and contributories desired, a supervision order was accordingly made.

But in the *London and Provincial Starch Co.*, W. N. 1867, 172, a compulsory order was made against the wishes of the company and of divers creditors. A bill of sale of the bulk of the company's assets had been given to one of the directors a few days after the presentation of the petition, and there was suspicion of fraud.

In the case of the *Oriental Commercial Bank*, W. N. 1866, 283, a resolution for a voluntary winding up having been passed after the presentation but before the hearing of a petition for a compulsory order, the petitioners (the directors of the company) asked at the hearing for a supervision order, but the evidence that the creditors and contributories were in favour of a supervision order not being satisfactory to the judge, and the circumstances requiring investigation, a compulsory order was made.

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In the following cases supervision orders were made at wish of majority of creditors or contributories. *Oriental Commercial Bank*, 15 W. R. 7; *London Flour Co.*, 16 W. R. 474, 552; *Tronbridge Water Supply Co.*, 18 L. T. 115; *Imperial Mercantile Credit Assoc.*, *ubi supra*. *Owen's Patent Wheel Co.*, 22 W. R. 151; W. N. 1873, 226. See further, Buckley, 283.

When a supervision order is made the winding up is deemed to commence from the date of the resolution authorising the winding up, and not merely from the presentation of the petition. *Hodgkinson v. Kelly*, 6 Eq. 497.

ORDER XXIX.

CONTINUING VOLUNTARY WINDING UP SUBJECT TO SUPERVISION, AND APPOINTING A LIQUIDATOR IN THE PLACE OF ONE RETIRING.

Upon the petition of the Credit Foncier, Limited, creditors of the above-named company, &c., This Court doth order that the voluntary winding up of the above-named company be continued, but subject to the supervision of the Court, and any of the proceedings in the voluntary winding up may be adopted as the judge shall think proper: And the respondent H. M. C., one of the present liquidators of the said company, by his counsel at bar, desiring to resign his office of liquidator: This Court doth order that J. E. H., of —, be appointed liquidator in the stead of the said H. M. C., and to act in conjunction with C. T. M., the continuing liquidator. And it is ordered that the petitioners and the said Hester and Co., Limited, and the liquidators thereof, and the respondents, the shareholders, be allowed their costs of and relating to this application, out of the assets of the company, such costs to be taxed by the taxing master, who is to allow to the respondents, shareholders, such costs as they might properly have incurred and would have incurred by employing one solicitor. The petitioners to be at liberty to appear before the judge as creditors in all proceedings relating to the winding up at the expense of Hester and Co., Limited. And it is ordered, that the retiring liquidator be at liberty to make any application in respect of his remuneration (if any), as such liquidator, as he may be advised. *Hester & Co., Limited*, Bacon, V.-C., 11 May, 1876, A. 815.

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